

**SERIAL 04163 IGA PERSONAL COMPUTER EQUIPMENT AND RELATED DEVICES**

**DATE OF LAST REVISION: April 20, 2006**

**CONTRACT END DATE: August 31, 2007**

**CONTRACT PERIOD BEGINNING SEPTEMBER 01, 2004  
ENDING AUGUST 31, 2007**

**TO:** All Departments

**FROM:** Department of Materials Management

**SUBJECT:** Contract for **PERSONAL COMPUTER EQUIPMENT AND  
RELATED DEVICES**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Western States Contract Alliance WSCA A63307 A63308, A63009, A63311. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at:  
[http://www.maricopa.gov/materials/Awarded\\_Contracts/search.asp](http://www.maricopa.gov/materials/Awarded_Contracts/search.asp).

**Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use Commodity Code(s) B0603778.**

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).

**WESTERN STATES CONTRACTING ALLIANCE**  
**MASTER PRICE AGREEMENT**  
**for**  
**COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES**  
**DELL MARKETING L.P.**  
**Number A63307**

This Agreement is made and entered into by Dell Marketing L.P., One Dell Way, Round Rock, TX 78682, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

**1. Definitions**

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**“Contractor”** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**“Consumables”** that are required for the operation of Equipment offered or supplied are included -- printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**“CPV Member”** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

**“CPV Program”** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

**“Cumulative Volume Discount”** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**“Documentation”** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

**“E-Rate”** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**“Educational Discount Price”** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**“Energy Star®”** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**“Equipment”** means workstations, desktop, laptop (includes Tablet PC’s), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

**“FCC”** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**“General Price Reduction Price”** means the reduction in the Dell Retail Price offered to consumer, business or governmental purchaser. General price reduction prices will be reflected in the PSS as soon as practical.

**“ISO 14001”** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**“Lead State”** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**“Mandatory”** The terms “must” and “shall” identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"PDA"** means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

**"Peripherals"** include but are not limited to storage, printers (including multifunction network print/fax/scanner devices), scanners (used in conjunction with computing equipment), monitors, keyboards, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. A third party may manufacture Peripherals. The Contractor shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.



**"Products and Services Schedule Prices"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor"** or **"Reseller Agent"** or **"Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.**

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator"** or **"URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

**2. Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

**3. Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

**4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

**5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

**6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

**A. Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. Unless otherwise agreed upon between the Purchasing Entity and the Contractor, the Purchasing Entity shall within fifteen (15) calendar days from the date of the Contractor's invoice, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise, the Product or Services shall be deemed accepted.

**B. Payment of Invoice**

- 1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the total amount on the Purchase Order. However, line item detail shall be available upon request.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services in transit or delivered prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity.

Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor, as long as the Contractor designates the carrier, until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products due to missing, damaged, defective, incorrect order and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the return shipping cost of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products due to missing, damaged, defective and incorrect order.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

**11. Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:
  - 1. The Product will conform with the technical information published in the Contractor's product manuals or data sheets.
  - 2. The Product will be suitable for the ordinary purposes for which such Product is intended,
  - 3. The Product will meet any mandatory specifications provided to the Contractor and agreed to in writing by the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when the Contractor advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
  - 4. The Product has been properly designed and manufactured for its intended use, and
  - 5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.

6. Exhibit A contains additional warranties in effect as of the date of this Agreement. Warranties may be deemed void in certain situations, including but not limited to the follows: (i) will not apply to use of a Product other than as anticipated and intended by the Contractor, (ii) a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or (iii) to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
- a) Limited Warranties and Return Policy

- B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

**12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Dell Branded Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Dell Branded Products or Services provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. Non-Dell Branded offerings: With respect to any claim that Non Dell-Branded product(s) infringes upon another person's or entity's patent, copyright, trade secret or other intellectual property rights in the United States, Dell agrees to pass through to the appropriate Purchasing Entity any rights to indemnification protection for which Dell currently or subsequently has an agreement in place with the potentially infringing equipment manufacturer/entity.
- D. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.

**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price . Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
  - Band 1: File/Print Servers, Mid-Range Servers
  - Band 2: Desktops, Laptops, Tablet PCs,
  - Band 3: Printers, High speed; Medium speed; Desktop; Laptop
  - Band 4: Storage Solutions
  - Band 5: PDA's
  - LAN equipment and related software.
  - General Purpose Software
- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with these requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15, Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

**15. Product Substitutions**

- A. **Substitution of units/configurations**  
MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.
- B. **Addition of units/configurations**  
MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to deliver Products to Purchasing Entities within and estimated 14 - 30 days after receipt of a valid Purchase Order, or in accordance with a schedule agreed to between the Purchasing Entity and the Contractor.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party reasonable written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

- A. The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. This indemnification shall in no event exceed an amount of twice the fees paid to Contractor under the specific order giving rise to the claim, suite, action, or liability.
- B. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees. To the maximum extent permitted by applicable state law, Purchasing Entities agree to be responsible for their own acts, errors, or omissions pertaining to this indemnification provision.
- C. **Additional representations**  
For acquisition of Services, the following additional terms shall apply. To the extent permitted by law, a Participating Entity accepts responsibility for and represents and warrants that: (a) the Participating Entity has obtained the appropriate license, intellectual property rights, or any other permissions required to support any Service Description, SOW, or Technical Specification Form signed by the Parties, or Contractor's performance of the Services, including the right to make any copies or Reproductions of any Participating Entity-provided software, (b) the Participating Entity's representations regarding the existence of an export license or the eligibility for export of software without a license are accurate, or (c) that Contractor shall not be held liable for the effect (if any) on the Participating Entity's third-party product warranties caused by having Contractor perform services on such third-party Products.



**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which its primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41, Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. With respect to the agreement, the Contractor agrees to comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.

- B. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- C. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall

remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Dell Marketing L.P.  
Attn: NASPO/WSCA Program Manager (Public Sector Contracts)  
One Dell Way, Box 8707  
Round Rock, TX 78682

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

- C. If the default remains after the opportunity for cure, the non-defaulting party may:
1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

By entering into a Contract, the Contractor agrees to consider, in the Contractor's discretion, all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State under said Contract. For any cause of action taken herein by Contractor, the State, at the State's discretion, may participate in any such action. In the event that Contractor desires to participate in such action, the Contractor shall not oppose the State's request to join such action so long as the interests/positions of the State are not adverse to the interests/positions of the Contractor.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is SPIN#143004340.

E-Rate eligibility depends upon who uses the equipment, how it is used and where it is located. In general terms, equipment located on school property and that is necessary for e-mail and Internet access in classrooms is eligible for E-Rate support.

File server components generally are eligible for discount when used for one or more of the following functions: Domain Name Server, E-mail Server, Communications Server, Terminal Server, Web Server, or DHCP Server.

File server components are not eligible for discount when used for one or more of the following functions: Application or DB Server, Archive or Data Warehouse, Caching Server, Print Server, or Proxy Server.

Generally, network electronics, such as switches and related items are eligible if they are part of a network that delivers information to classrooms. Caching devices are not eligible.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. DELL MARKETING L.P.**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

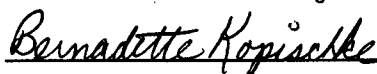
By: 

Title: National Contract Manager

Date: August 26, 2004

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: 

Title: Acquisition Management Specialist

Date: 8/27/04

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative

By: 

Date: 27 AUG 04



## EXHIBIT A - ADDITIONAL WARRANTIES

### **Limited Warranties and Return Policy**

Dell-branded hardware products purchased in the U.S. or Canada come with either a 90-day, 1-year, 2-year, 3-year or 4-year limited warranty, depending on the product purchased. To determine which warranty came with your hardware product(s), see your packing slip or invoice. The following sections describe the limited warranties and return policy for the U.S.

### **What is covered by this limited warranty?**

This limited warranty covers defects in materials and workmanship in your — our end-user customer's — Dell-branded hardware products, including Dell-branded peripheral products.

### **What is not covered by this limited warranty?**

This limited warranty does not cover:

- Software, including the operating system and software added to the Dell-branded hardware products through our factory-integration system, third-party software, or the reloading of software.
- Non-Dell branded and Solution Provider Direct products and accessories
- Problems that result from:
  - External causes such as accident, abuse, misuse, or problems with electrical power
  - Servicing not authorized by Dell
  - Usage that is not in accordance with product instructions
  - Failure to follow the product instructions or failure to perform preventive maintenance
  - Problems caused by using accessories, parts, or components not supplied by Dell
- Products with missing or altered Service Tags or serial numbers
- Products for which Dell has not received payment

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPAIR AND REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THE LIMITED WARRANTY PERIOD REFLECTED ON YOUR PACKING SLIP OR INVOICE. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU.

WE DO NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY OR FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. OUR LIABILITY WILL BE NO MORE THAN THE AMOUNT YOU PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM. THIS IS THE MAXIMUM AMOUNT FOR WHICH WE ARE RESPONSIBLE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

### **How long does this limited warranty last?**

This limited warranty lasts for the time period indicated on your packing slip or invoice, except for the following Dell-branded hardware:

- Portable computer batteries carry a 1-year limited warranty.
- Projector lamps carry a 90-day limited warranty.
- Memory carries a lifetime limited warranty.

Monitors carry the longer of either a 3-year limited warranty or the remainder of the warranty for the Dell computer to which the monitor will be connected.

PDAs, MP3 players, earphones, remote inline controls, and AC adapters carry a 1-year limited warranty.

Other add-on hardware carries the longer of either a 1-year limited warranty for new parts and a 90-day limited warranty for reconditioned parts or, for both new and reconditioned parts, the remainder of the warranty for the Dell computer on which such parts are installed.

The limited warranty on all Dell-branded products begins on the date of the packing slip or invoice. The warranty period is not extended if we repair or replace a warranted product or any parts. Dell may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.

**What do I do if I need warranty service?**

Before the warranty expires, please call us at the relevant number listed in the following table. Please also have your Dell Service Tag or order number available.

Web Support: <http://www.support.dell.com/ContactUs/ContactUsHome.aspx?c=us&1=en&s=gen>

Government and Education Customers: 1-800-234-1490

Dell-branded Memory: 1-888-363-5150

**What will Dell do?**

During the 90 days of the 90-day limited warranty and the first year of all other limited warranties: During the 90 days of the 90-day limited warranty and the first year of all other limited warranties, we will repair any Dell-branded hardware products returned to us that prove to be defective in materials or workmanship. If we are not able to repair the product, we will replace it with a comparable product that is new or refurbished.

When you contact us, we will issue a Return Material Authorization Number for you to include with your return. You must return the products to us in their original or equivalent packaging, prepay shipping charges, and insure the shipment or accept the risk if the product is lost or damaged in shipment. We will return the repaired or replacement products to you. We will pay to ship the repaired or replaced products to you if you use an address in the United States (excluding Puerto Rico and U.S. possessions and territories). Otherwise, we will ship the product to you freight collect.

If we determine that the problem is not covered under this warranty, we will notify you and inform you of service alternatives that are available to you on a fee basis.

**NOTE: Before you ship the product(s) to us, make sure to back up the data on the hard drive(s) and any other storage device(s) in the product(s). Remove any confidential, proprietary, or personal information and removable media such as floppy disks, CDs, or PC Cards. We are not responsible for any of your confidential, proprietary, or personal information; lost or corrupted data; or damaged or lost removable media.**

**During the remaining years:** For the remaining period of the limited warranty, we will replace any defective part with new or refurbished parts, if we agree that it needs to be replaced. When you contact us, we will require a valid credit card number at the time you request a replacement part, but we will not charge you for the replacement part as long as you return the original part to us within 30 days after we ship the replacement part to you. If we do not receive the original part within 30 days, we will charge to your credit card the then-current standard price for that part.

We will pay to ship the part to you if you use an address in the United States, (excluding Puerto Rico and U.S. possessions and territories). Otherwise, we will ship the part freight collect. We will also include a prepaid shipping container with each replacement part for your use in returning the replaced part to us.

**NOTE: Before you replace parts, make sure to back up the data on the hard drive(s) and any other storage device(s) in the product(s). We are not responsible for lost or corrupted data.**

#### What if I purchased a service contract?

If your service contract is with Dell, service will be provided to you under the terms of the service agreement. Please refer to that contract for details on how to obtain service.

If you purchased through us a service contract with one of our third-party service providers, please refer to that contract for details on how to obtain service.

#### How will you fix my product?

We use new and refurbished parts made by various manufacturers in performing warranty repairs and in building replacement parts and systems. Refurbished parts and systems are parts or systems that have been returned to Dell, some of which were never used by a customer. All parts and systems are inspected and tested for quality. Replacement parts and systems are covered for the remaining period of the limited warranty for the product you bought. Dell owns all parts removed from repaired products.

#### May I transfer the limited warranty?

Limited warranties on systems may be transferred if the current owner transfers ownership of the system and records the transfer with us. The limited warranty on Dell-branded memory may not be transferred. You may record your transfer by going to Dell's Web site:

If you are an Individual Home Consumer, go to [www.dell.com/us/en/dhs/topics/sbtopic\\_015\\_ccare.htm](http://www.dell.com/us/en/dhs/topics/sbtopic_015_ccare.htm)

If you are a Home Office, Small, Medium, Large, or Global Commercial Customer, go to

[www.dell.com/us/en/biz/topics/sbtopic\\_ccare\\_nav\\_015\\_ccare.htm](http://www.dell.com/us/en/biz/topics/sbtopic_ccare_nav_015_ccare.htm)

If you are a Government, Education, or Healthcare Customer, or an Individual Home Consumer who purchased through an Employee Purchase Program, go to [www.dell.com/us/en/pub/topics/sbtopic\\_015\\_ccare.htm](http://www.dell.com/us/en/pub/topics/sbtopic_015_ccare.htm)

If you do not have Internet access, call your customer care representative or call 1-800-624-9897.

#### Total Satisfaction Return Policy (U.S. Only)

We value our relationship with you and want to make sure that you're satisfied with your purchases. That's why we offer a Total Satisfaction return policy for most products that you, the end-user customer, purchase directly from Dell. Under this policy, you may return to Dell products that you purchased directly from Dell for a credit or a refund of the purchase price paid, less shipping and handling and applicable return fees as follows:

**New Hardware Products and Accessories:** Unless you have a separate agreement with Dell, all hardware, accessories, peripherals, parts and unopened software still in its sealed package, excluding the products listed below, may be returned within twenty-one (21) days from the date on the packing slip or invoice. New PowerEdge™, PowerConnect™ and PowerVault™ products may be returned within thirty (30) days from the date on the packing slip or invoice except that new PowerEdge™ SC servers and n series products purchased from the Small and Medium Business Sales Division may only be returned within fourteen (14) days from the date on the packing slip or invoice. To return applications software or an operating system that has been installed by Dell, you must return the entire computer. A different return policy applies to nondefective products purchased through Dell's Software and Peripherals division by customers of our Small and Medium Business divisions. Those products may be returned within twenty-one (21) days from the date on the packing slip or invoice, but a fifteen percent (15%) return fee will be deducted from any refund or credit. The Total Satisfaction Return Policy and Software and Peripherals division return policy are not available for Dell/EMC storage products, EMC-branded products, Unisys-branded products, PowerVault™ 160T tape libraries, enterprise software, non-Dell branded enterprise products, software and/or software licenses purchased under any type of volume purchase agreement or any non-Dell customized hardware and/or software product(s).

**Reconditioned or Refurbished Dell-Branded Hardware Products and Parts:** All reconditioned or refurbished PowerEdge™, PowerConnect™ and PowerVault™ products may be returned within thirty (30) days from the date on the packing slip or invoice. All other reconditioned or refurbished Dell-branded hardware products and parts may be returned within fourteen (14) days of the date on the packing slip or invoice.

**How to Return:** To return products, e-mail or call Dell customer service to receive a Credit Return Authorization Number within the return policy period applicable to the product you want to return. You must obtain a Credit Return Authorization Number in order to return the product. See "Contacting Dell" or "Getting Help" in your customer documentation (or [www.dell.com/us/en/gen/contact.htm](http://www.dell.com/us/en/gen/contact.htm)) to find the appropriate contact information for obtaining customer assistance. You must ship the products to Dell within five (5) days of the date that Dell issues the Credit Return Authorization Number. You must also return the products to Dell in their original packaging, in as-new condition along with any media, documentation, and all other items that were included in the original shipment, prepay shipping charges, and insure the shipment or accept the risk of loss or damage during shipment.

**Note:** Before you ship the product(s) to us, make sure to back up the data on the hard drive(s) and any other storage device(s) in the product(s). Remove any confidential, proprietary or personal information, removable media, such as floppy disks, CDs, or PC Cards. We are not responsible for any of your confidential, proprietary or personal information; lost or corrupted data; or damaged or lost removable media.

Limited Warranty for Dell-Branded Ink and Toner Cartridges (U.S. and Canada Only)

Dell Inc. warrants to the original purchaser of genuine Dell-branded toner cartridges that they will be free from defects in material and workmanship for the life of the cartridge and that for genuine Dell-branded ink cartridges they will be free from defects in material and workmanship for two years beginning on the date of invoice. If this product proves defective in either material or workmanship, it will be replaced without charge during the limited warranty period if returned to Dell. You must first call our toll-free number to get your return authorization. In the U.S., call 1-800-822-8965; in Canada, call 1-800-387-5757. If we are not able to replace the product because it has been discontinued or is not available, we will either replace it with a comparable product or reimburse you for the cartridge purchase cost, at Dell's sole option. This limited warranty does not apply to ink or toner cartridges that have been refilled, improperly stored, or due to problems resulting from misuse, abuse, accident, neglect, mishandling, incorrect environments, or wear from ordinary use.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. FOR CANADIAN CUSTOMERS, EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS WARRANTY STATEMENT, DELL DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FOR THE PRODUCT. FOR U.S. CUSTOMERS, ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR CONDITIONS, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY COVERAGE TERMINATES IF YOU SELL OR OTHERWISE TRANSFER THIS PRODUCT TO ANOTHER PARTY.

DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. DELL'S LIABILITY WILL BE NO MORE THAN THE AMOUNT YOU PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM. THIS IS THE MAXIMUM AMOUNT FOR WHICH DELL IS RESPONSIBLE.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**Limited Warranty for Dell-Branded Tape Media (U.S. and Canada Only)**

Dell warrants to you, the end-user customer, that this product will be free from defects in material and workmanship for one year from the invoice date, if properly used and maintained. If this product proves defective in either material or workmanship, it will be replaced without charge if returned to Dell. You must first call our toll-free number to get your return authorization. In the U.S., call 1-800-822-8965. In Canada, call 1-800-387-5757. If we are not able to replace the product because it has been discontinued or is not available, we will replace it with a comparable product. This warranty does not apply to failure of the product resulting from misuse, abuse, accident, neglect or mishandling, improperly adjusted or maintained drives, incorrect environments or wear from ordinary use.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE (OR JURISDICTION TO JURISDICTION). DELL'S RESPONSIBILITY FOR MALFUNCTIONS AND DEFECTS IN HARDWARE IS LIMITED TO REPLACEMENT AS SET FORTH IN THIS WARRANTY STATEMENT. FOR CANADIAN CUSTOMERS, EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS WARRANTY STATEMENT, DELL DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, FOR THE PRODUCT. FOR U.S. CUSTOMERS, ALL EXPRESS AND IMPLIED WARRANTIES FOR THE PRODUCT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE LIMITED IN TIME TO THE TERM OF THIS LIMITED WARRANTY. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, WILL APPLY AFTER THE LIMITED WARRANTY PERIOD HAS EXPIRED. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES OR CONDITIONS, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY OR CONDITION LASTS, SO THIS LIMITATION MAY NOT APPLY TO YOU. THIS WARRANTY COVERAGE TERMINATES IF YOU SELL OR OTHERWISE TRANSFER THIS PRODUCT TO ANOTHER PARTY.

DELL DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES PROVIDED FOR IN THIS LIMITED WARRANTY OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY FOR THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES, FOR PRODUCTS NOT BEING AVAILABLE FOR USE, OR FOR LOST DATA OR LOST SOFTWARE. DELL'S LIABILITY WILL BE NO MORE THAN THE AMOUNT YOU PAID FOR THE PRODUCT THAT IS THE SUBJECT OF A CLAIM. THIS IS THE MAXIMUM AMOUNT FOR WHICH DELL IS RESPONSIBLE.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **EXHIBIT B - COMPLAINT RESOLUTION**

Dell relies on direct feedback from customers through face-to-face, telephone, email and facsimile communication with our dedicated account management team. *Voice of the Customer* is a key initiative at Dell that allows us to maintain the high quality of customer service that has garnered nationwide recognition. This initiative causes us to promptly review and address every service, sales, equipment or contractual issue.

All levels of management work with our customers to ensure that we resolve issues in a timely and complete manner. An email sent to Michael Dell is visible to every level of our company's senior management and is responded to with utmost urgency. While the issue resolution procedures described in this section remain our preferred way of resolving customer issues, the option of contacting Michael Dell ensures a consistent focus on the *Voice of the Customer* at all levels of the company.

Dell also offers Advanced Escalation and Problem Resolution Services that exceed the standard approaches described here (as described in Exhibit C - Value Added Services).

### **A. Customer Service**

Dell's account team provides an escalation path for customer satisfaction issues, from the sales representative to the director of the customer's region.

The Dell Sales Representative (SR), currently assigned to the customer's account, is the primary point of contact for daily business. Any issues related to configuration, pricing, quotes, or purchase orders should be communicated initially to the SR or the Account Executive (AE) for resolution and followed up in writing via email with a copy to the Inside Sales Manager (ISM).

Should the SR be temporarily unavailable, a backup representative will assist the customer. In the rare event that both the SR and the designated backup are unavailable, the ISM is available to handle the issue. Path of escalation for sales issues is as follows:

1. Sales Representative
2. Account Executive
3. Inside Sales Manager
4. Regional Sales Manager
5. Sales Director or Vice President.

If a resolution cannot be reached, the escalation process is then directed to the Public Sector General Manager, Brian Wood.

When necessary, Dell assigns a Project Manager (PM) as a single point of contact for customized deployment and installation. To facilitate timely response to problems during critical periods, the Dell PM will monitor the progress of the rollout and/or installation in conjunction with the Dell Service Field PM.

All operational issues should be communicated to the PM as soon as possible. Initial communication may be email or telephone based on priority of the issue. All telephone communications should be followed by email documentation. The PM will record the issue and coordinate involvement of appropriate resources to assess the issue and define an action plan for resolution. The action plan will be communicated to the project team. The weekly progress report will include status of issues and related action plans.

### **B. Equipment**

Dell's reputation for industry-leading service and support starts with the high quality of our equipment. When support is necessary, the direct model enables us to quickly respond based on specific information provided by our customers.

This information, combined with our knowledge of equipment (as original manufacturer), ensures our premier status. The technical support process is as follows:

1. Technical support calls are routed within Dell by use of specific 800 numbers, or service and support options from a customized 800 number.
2. Technical issues are handled in the main Technical Support queues. Calls are routed to the next available technician. This technician gathers the required information from the caller, including the system ID (Service Tag) number and a description of the problem. This Level One (L1) representative uses several tools and knowledge based aids to diagnose and resolve the issue.
3. If the problem requires a more advanced level of support, the Level One representative consults with a Level Two (L2) technician. The Level Two Technician uses additional tools in conjunction with their expertise to resolve many of the issues. If the issue is not resolved by consulting with the Level Two Technician, the Level Two Technician takes ownership of the issue for further research.
4. Once the Level Two Technician has exhausted the resources and has still not resolved the issue, the issue is escalated to the International Product Support (IPS) for resolution. The IPS engineer is now responsible for resolving the issue. The IPS engineer will work with vendors, manufacturers and engineers to resolve the issue.
5. The customer can utilize the Dell 800 number to receive the latest status on the service call for that specific unit.
6. Customer calls are placed to the Dell Technical Support group through an 800 number. When an on-site service call is required, Dell ships the part required. A technician is dispatched to pick up the part, go to the customer's site, replace the defective part and ship it to Dell. Escalation procedures are built into the process to insure response times are met.
7. Dell developed Dell's Product Support (DPS) for tracking all service requests and dispatching on-site engineers. DPS is Dell's service history database. The Dell Customer Service Delivery (CSD) technician can instantly see the end-user's model number and configuration in DPS by simply asking for the 5-character service tag located on the back of each Dell system. Armed with this information, the technician may begin any necessary troubleshooting procedures with the end user.
8. DPS shows the CSD technician the complete service history of that particular PC. The CSD technician must log entries into DPS each time there is communication with a customer, including nature of the problem and troubleshooting steps taken. So, each call into Technical Support is documented. The CSD technician uses the service history to determine whether a problem needs escalation or needs to be researched further.
9. Dell's service provider is linked into DPS, so if a problem in the field requires on-site attention, the dispatch is seamless.
10. Finally, DPS is the primary tool for diagnosing and attacking early life failures of new products and measuring a product's reliability.

### **C. Billing Issues**

Dell emphasizes quick response to billing issues with an immediate and concise approach:

1. Each account with payment terms is assigned an Accounts Receivable Specialist. Billing issues can be directed to that person
2. If no resolution, issues are escalated to the Accounts Receivable Team Lead
3. If no resolution, issues are then escalated to the Accounts Receivable Supervisor.
4. The next level of escalation for billing issues is the segment Controller, the most senior finance representative associated with billing and collections.

#### **D. Contractual Issues**

In addition to the standard mechanisms for resolving service, equipment or billing issues, Dell Public Sector maintains a highly experienced contract management team. This team is staffed with experts who understand the unique requirements of SLG, K-12 and HIED customers. Working as a part of the operations organization, this team provides both first-response and point-of-escalation support.

##### **1. First-Response**

A tenet of the direct model encourages a single point of accountability. This means that while Dell provides a documented method for responding to customer issues, every person at Dell is encouraged to take ownership of their resolution. As an example, while the contracts team primarily exists to assure contract compliance, it often serves as a first-response point with customers. The contract manager listens to customers and connects them with our streamlined customer service, equipment and billing processes. The process will resolve the issue to the satisfaction of the customer without further engagement of the contracts team. The contracts team often follows up to ensure the problem was solved to the customer's satisfaction.

Contract managers are also charged with pro-active monitoring of Dell behaviors to assure contract compliance. This ensures that the entire delivery and support organization understands Dell's obligations from day one of a new contract.

Examples of the first-response function under the current WSCA contract include

- a. Answering end-customer questions about the overall WSCA program and how Dell's offering meets their needs under this program.
- b. Escalating service complaints to the appropriate technical or customer service organization.
- c. Routing equipment support questions as appropriate.
- d. Ensuring that repeat support issues are escalated inside the product and support organizations.
- e. Connecting customers with the appropriate billing representative and managing tools that ensure billing is in accordance with contractual requirements.

#### **E. Point of Escalation**

Some complaints are harder to resolve than others. If a customer has engaged the appropriate customer service, equipment and billing resolution process and is dissatisfied with the results, the contract management team can act as a level of escalation by:

1. Supporting a customer's unique requirements for a special project.
2. Escalating customer questions and complaints to the NASPO | WSCA Administrator.
3. Working with customers and Dell internal resources to ensure expectations are set and met.
4. Ensuring the decisions of the NASPO | WSCA Administrator are implemented on future orders.

Contract management can be considered an administrative function. Dell's ability to staff an industry-leading contract management team is enhanced by the focus of this team on issues that improve overall customer experience. Active engagement in resolving customer concerns is integral to this role. The contract management team ensures that these concerns get to the right people inside Dell, then follows up to ensure they do not become contractual issues.



## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services and their related costs.

### **A. Deployment Services**

Dell delivers a comprehensive, end-to-end solution for deployment needs, providing improved resource utilization, a single point of accountability and exceptional execution. Dell deployment services allow customers to focus on more strategic projects, helping save both time and effort while reducing Total Cost of Ownership (TCO). Dell provides the following services:

#### **1. Custom Factory Integration**

Dell's Custom Factory Integration (CFI) service provides a range of custom built, factory-installed solutions to help eliminate installation hassles. After determining the customer's exact needs, Dell performs the custom configuration during the initial system build. It's a one-touch, high quality, custom integration; which means that systems are not twice built and twice shipped. This ensures that Dell products are custom configured to the customer's specification and delivered from Dell's ISO 9001-certified factory. Dell currently offers the following CFI services:

- a. Software Integration – Custom configuration and installation of software.
- b. Image Management Services – A complete image deployment solution.
- c. Hardware Integration – Installation of industry-standard hardware components.
- d. X-Image – A client software service designed to develop, deploy and manage a hardware independent custom image that will run across all Dell clients' systems (Optiplex, Latitude and Precision). This means that Dell can help reduce significantly the time and cost associated with custom image management.
- e. Asset Management Services
  - Asset Security Service
  - Asset Tag Service
  - Asset Tracking Service
- f. CFI Client Support Services
  - Parts Replacement Program
  - Image Recovery Products

### **B. Delivery Options**

All Dell systems are built to customer specifications and shipped directly to the end user. The following shipping options are available:

- 1. 3- to 5-Day Ground Shipping – Most cost-effective shipping option.
- 2. 2-Day Shipping – Timely shipping at a reasonable price.
- 3. Next-Day Shipping – When delivery is critical to customer deadlines.

Dell also offers customer-selected third-party carrier shipping options at the customer's discretion and expense.

### **C. Custom Delivery Services**

Once the systems are built, Dell can arrange a number of custom delivery services to best meet customer work environment and staffing constraints. Delivery services are described below; each service assumes the use of a Dell-selected carrier.

#### **1. Inside Delivery**

- a. Single Destination Delivery
- b. Inner Office Distribution
- c. Unpacking of Boxes
- d. Destination Bundle
- e. Package Removal Bundle

**2. Scheduled Delivery Services**

With scheduled delivery services, customers benefit from a predictable and/or precise delivery cycle to specific locations. Projects may include recurring deliveries that typically involve a repetitive schedule or clearly defined deliveries with start and end dates. Choices available include:

- a. Date-Specific Delivery
- b. Time-Specific Delivery
- c. Weekday-Specific Delivery
- d. After-Hours Delivery
- e. Weekend Deliveries

**3. Pre-Delivery Services**

Pre-delivery services are performed to prepare shipments for delivery, based on the specific receiving environment.

- a. Palletization
- b. Standard Pallet
- a. Custom Pallet
- b. Order Consolidation
- c. Specific Truck Size
- d. Lift-Gate/Tail-Gate Service
- e. Advance Delivery Notice

**4. Destination Services**

- a. De-Palletization

**D. Custom Installation Services**

Dell has streamlined standard installation services to enable customers to easily choose the right package to meet deployment needs, while keeping internal customer resources focused on strategic initiatives. Our installation packages provide customers with a choice of service offerings ranging from system set up and test to comprehensive install/de-install with user data transfer. Dell's flexibility as a result of the direct model allows custom installation services to be designed around unique customer requirements. Whether standard or custom, Dell manages the installation scheduling process and is the single point of accountability.

- 1. PC Install
- 2. PC Install with data transfer
- 3. Server and Storage Installation Service
- 4. Pre-Install Site Configuration
- 5. Server and Storage Installation (with Factory-Installed NOS)
- 6. Server and Storage and NOS Installation
- 7. Basic Server Set-Up (with Factory-Installed NOS)
- 8. Novell ICS Basic Server Set-Up (with Factory-Installed NOS)
- 9. Windows NT or Novell NetWare Operating System Installation
- 10. Server Rack Mounting

**E. Standard Custom Support Services**

- 1. Response Time
  - a. 7x24 Telephone Support
  - b. 30-Day Getting Started Help line
  - c. Next Business Day, Onsite Services

**F. Expanded Customer Support Services**

- 1. Same-Day, On-site Services
  - a. 4-Hour Response Service
  - b. 8-Hour Response Service
  - c. 2-Hour Response Service
  - d. 2-Hour Response Service, 6-Hour Repair

2. **Client Gold Technical Support**

Dell's Gold Technical Support provides advanced level of technical support expertise for Dell desktops, notebooks and workstations. Gold Technical Support combines rapid response and resolution with advanced technical assistance and account management to give customers a single point of contact for personal system support. Key features are:

- a. Access to Dell's Gold Queue
- b. Technical Account Manager (TAM) Services
- c. Seamless Escalation Support
- d. Quarterly Service Performance Report

3. **Premier Enterprise Support**

- a. Platinum Enterprise
- b. Gold Enterprise
- c. Silver-Same Day Basic
- d. Bronze Next-Business-Day (NBD) Basic
- e. Software Support for Servers and Storage
- f. OpenManage™ Subscription Service

**G. Software Support**

Dell's software support services provide toll-free priority-access operating system support from experienced technicians for Microsoft and Novell operating systems. We also offer extensive application support for over 100 different types of client applications.

- 1. Standard Software Support
- 2. Client Software Support
- 3. Advanced Software Support

**H. Dell's Premier Access – Self-Maintainer Program, Tier I and Tier II**

The Dell Premier Access Program is a service and support program designed specifically for Information Service professionals who have technical expertise in diagnosing and servicing computer systems. With benefits like fast access to service and service part dispatches and direct access to advanced level technical support, the Premier Access Program helps provide the knowledge, tools and services necessary to efficiently maintain OptiPlex, Dimension, Latitude, PowerEdge and Workstation systems.

Whether the customer supports their own Dell systems, uses a help desk to dispatch service, or contracts with others for the maintenance of their Dell equipment, the Premier Access Program helps contain service and support costs and provides direct access to the exact level of service and support required.

**I. Keep Your Hard Drive Services**

The Dell Keep Your Hard Drive services gives participants the option of retaining a failed hard drive (that is covered by Dell warranty), while receiving a replacement hard drive. Replacement hard drives may be new or reconditioned and supported as new. This service provides control over sensitive and confidential data contained on the hard drive and allows customers to determine the method of disposal for the failed hard drive. Key benefits include:

- 1. Greater Security
- 2. Complete Control
- 3. Data Privacy

**J. Training and Certification**

- 1. Delivery Methods
  - a. E-learning
  - b. Instructor-led
- 2. IT Professional Training
- 3. Education Professional Training
- 4. Productivity at Work Courses

**WESTERN STATES CONTRACTING ALLIANCE**  
**MASTER PRICE AGREEMENT**  
**for**  
**COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES**  
**GATEWAY COMPANIES**

**Number A63308**

This Agreement is made and entered into by Gateway Companies, 610 Gateway Drive, N. Sioux City, SD, 57049, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

**1. Definitions**

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**"Energy Star®"** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**"Equipment"** means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"ISO 14001"** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"PDA"** means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

**"Peripherals"** include but are not limited to storage, printers (including multifunction network print/fax/scanner/copying devices), scanners, monitors, keyboards, cameras (digital and video used in conjunction with computing equipment), projectors, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the Contract Administrator.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

**"Products and Services Schedule Prices"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor" or "Reseller Agent" or "Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

**2. Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

**3. Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

**4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

**5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

**6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

**A. Acceptance**

A Purchasing Entity shall reasonably determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service, failing which the Product or Services, as the case may be, shall be deemed accepted by the Purchasing Entity.

**B. Payment of Invoice**

- 1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.



2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also in accordance with the Contractor's commercial Return Policy. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

**11. Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:
  - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
  - 2. The Product will be suitable for the ordinary purposes for which such Product is intended,
  - 3. The Product will meet any mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
- 4. The Product has been properly designed and manufactured for its intended use, and

5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
  - a) Gateway Custom Integrated Solutions (CIS) Software Installation Agreement
  - b) Standard Terms and Conditions for Gateway Custom Integrated Solutions
  - c) Standard Terms of Sale and Limited Warranty Agreement
- B. Contractor may modify the limited warranties described in Exhibit A from time to time with prior written approval of the Contract Administrator. Scope and length of limited warranties are set forth within the specific configurations on the Contractor's web page.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

**12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
  1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
  1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
  1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.

**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders quoted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. When the Cumulative Inception-to-Date Sales Volume ("ITD SV") for all WSCA Participating Entities of the Contractor reaches the thresholds shown below, the Contractor will apply the greater discount listed to all prospective Orders placed by WSCA Participating Entities for that Product Series. ITD SV will be calculated within thirty (30) days after the end of each quarter. The increased discount(s) will be applied to Orders issued on the first of the month of the following quarter.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
  - Band 1: File/Print Servers, Mid-Range Servers
  - Band 2: Desktops, Laptops, Tablet PCs,
  - Band 3: Printers, High speed; Medium speed; Desktop; Laptop
  - Band 4: Storage SolutionsLAN equipment and related software.  
General Purpose Software
- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to deliver Products to Purchasing Entities within 10 - 30 days after receipt of a valid Purchase Order pending parts availability, or in accordance with the schedule in the Purchasing Entity's Purchase Order. The Contractor shall provide the estimated time of arrival at the time of quotation.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead

State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
  - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.



- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be new or serviceably used (tested to new).

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is

confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Gateway Companies, Inc.  
610 Gateway Drive  
N. Sioux City, SD 57049  
Attn: Kris Mogensen, Contractor Administrator  
E-mail: kris.mogensen@gateway.com  
Phone: 800.846.2042, ext. 28971  
Fax: 605.232.2533

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 43. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.

5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.

- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State, without recourse, any and all claims for overcharges as to goods and/or services provided by Contractor in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State ("Antitrust Claims), providing that the State, and not the Contractor, actually suffered those damages being assigned. Contractor does not waive or assign any of its rights, interest or title to the defense the Contractor may have related to or arising out of any Antitrust Claims.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each applicable delivery.

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is SPIN 143004991. The list of E-Rate qualifying products can be found on the E-Rate website at: <http://sl.universalservice.org>.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. GATEWAY COMPANIES**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Mary Jane Sweeney

Title: Senior Manager, Contracts

Date: 7/2/04

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 7/6/04

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: [Signature]

Date: 6 JUL 04

## EXHIBIT A - ADDITIONAL WARRANTIES

### CUSTOM INTEGRATED SOLUTIONS (CIS) SOFTWARE INSTALLATION AGREEMENT

This Agreement is made this      day of      , 200 ("Effective Date") by and between Gateway Companies, Inc., ("Gateway") and      ("Customer"). Under the following terms and conditions, Gateway will receive (or furnish), replicate and install ("Software") on Gateway computer products ("Products") purchased by Customer.

1. **Title:** Title or license to copyrights and patents in the Software (and the source and object code associated with the Software) are and shall remain the property of Customer or Customer's licensors. All copies of the Software made by or for Gateway, as well as any and all Software developed by Gateway for Customer's benefit, shall remain the property of Customer. Gateway shall install the Software only on Customer designated Products.
2. **License Grant:** In order to perform this service, Customer hereby grants to Gateway and its affiliates a nonexclusive, nontransferable license and right to internally manufacture, use, and reproduce copies of the Software as contemplated herein. If necessary to fulfill Customer's instructions, such grant shall also include the right to modify, create and reproduce computer derivative works, which works shall belong to the licensor of the Software.
3. **Representations & Warranties:** Customer represents and warrants that: (1) it has full power to enter into this Agreement; (2) it has all rights, title, and interest in the Software and the right to copy or have copies made for its own use, and such rights can be conveyed to Gateway without restriction for the purposes contemplated herein; (3) modifications which the Customer requests Gateway to make to the Software do not infringe upon or misappropriate any copyright, patent, trade secret, or other proprietary rights of any third party; (4) the media upon which the Software is provided to Gateway by Customer is free from all defects and viruses; and (5) installation of the Software shall not by itself result in any performance problems or degradation of the Gateway Products.
4. **Export Control Compliance:** Customer shall comply with any applicable export control laws and regulations as they apply to the Software and/or the export of Gateway Products onto which the Software has been installed as contemplated by this Agreement, and shall obtain any permits and licenses required for the lawful export, operation and use of such Products or components thereof. Customer shall indemnify and defend Gateway against any breach of its obligations under this paragraph and shall pay all resulting costs, damages and attorney's fees related thereto.
5. **Indemnification:** To the extent permitted by law, the Customer agrees to indemnify, hold harmless and defend Gateway, its officers, directors, contractors and employees from and against any assertions, claims, causes of action, liabilities, costs, losses, and damages, including direct, indirect, or consequential damages arising out of or relating to any matter contemplated by this Agreement including: (1) alleged infringement or violation of any trademark, copyright, trade secret, right of publicity or privacy, patent or other proprietary right with respect to the Software; (2) any possession or use of confidential or proprietary information or trade secrets Customer has obtained from sources other than Gateway; (3) any Customer failure to comply with federal, state or local law (including notice of any ITAR encryption requirements); and (4) the breach of any representation, covenant or warranty stated herein.
6. **General Provisions:** All matters arising as between Gateway and Customer with respect to the subject matter of this Agreement which are not specifically addressed herein shall be governed by the Gateway Standard Terms and Conditions of Sale accompanying the Products, which are incorporated herein by this reference.

IN WITNESS WHEREOF Gateway and Customer have executed this Agreement as of the Effective Date by signature of their authorized representatives.

Gateway Companies, Inc.

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

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Gateway Confidential, rev. 01.15.02



## EXHIBIT A, Continued

### STANDARD TERMS AND CONDITIONS FOR GATEWAY CUSTOM INTEGRATED SOLUTIONS

This Agreement sets forth the terms of your ("Buyer") order ("Order") for custom services from Gateway, Inc. or any of its subsidiaries or affiliates ("Gateway"). Upon its acceptance of your Order, Gateway will provide the services set forth in your Order on these terms and the terms in Gateway's Standard Terms of Sales and Limited Warranty Agreement (the "Terms of Sale"), which together are the complete agreement between you and Gateway.

1. **DEFINITIONS.** "Custom Software and Hardware" means software and hardware not listed on Gateway's standard product list. "Furnished Property" means Custom Software and Hardware purchased by Buyer and supplied to Gateway for custom order integration.
2. **BUYER'S OBLIGATIONS.** Buyer agrees to: provide to Gateway written authorization to place orders with hardware and software suppliers for and on behalf of Buyer and to be solely responsible for all costs and expenses therefor; be solely responsible for system compatibility testing of Custom Software and Hardware; obtain a valid and enforceable license to have Custom Software loaded on Gateway's products and use of the Custom Software in a legal and appropriate manner; and perform all other Buyer obligations as set forth in these terms and conditions.
3. **RETURN POLICY.** Buyer may return products under Gateway's return policy as provided in Section 3 of the Terms of Sale, except that (i) for Custom Hardware and Software, Gateway will act as Buyer's representative by returning such Custom Hardware or Software to the supplier and remitting to Buyer any proceeds, and (ii) for Products that have been customized to Buyer's specifications, the amount of any refund will be reduced by the greater of (a) 20% of the purchase price of the Products, or (b) costs Gateway incurs to eliminate custom features reasonably necessary to render such products commercially salable.
4. **GATEWAY'S OBLIGATIONS.** Gateway will procure on your behalf and as your agent the Custom Software and Hardware and integrate Custom Software and Hardware with Gateway products as specified in the Order. Gateway agrees to support Gateway-branded products as provided in the Terms of Sale. Such support shall not apply to any Custom Software and Hardware, whether integrated into a Gateway system or sold as a stand-alone item. Any support for Custom Hardware and Software should be obtained directly from the maker(s) and/or licensors of such Custom Hardware and Software. Gateway may, as a service to its customers, assist efforts to replace defective custom hardware covered under the maker(s) warranty, through facilitation of orders for replacement parts. Gateway shall not be responsible for any damages or losses that occur as a result of installation/integration of Custom Software or Hardware. Gateway will not install Custom Software on systems repaired at Buyer's location. Gateway may, in its discretion, install Custom Hardware and Software on systems that are repaired or replaced at a Gateway service facility.
5. **PERIOD OF PERFORMANCE.** Period of performance shall be the lesser of one (1) year from date of award or until all Orders have been completed. Gateway and Buyer shall have the option to extend the period of performance upon mutual agreement.
6. **FURNISHED PROPERTY.** Furnished Property shall be supplied to Gateway in sufficient time to enable Gateway to meet delivery schedules. Buyer shall provide a monthly forecast of expected purchases and Purchase Orders shall be issued with adequate lead-times to meet such forecasts. All Furnished Property shall be assigned a custom part number. The Furnished Property shall be segregated from standard Gateway inventory. Gateway shall not order Furnished Property for and on behalf of Buyer until receipt of an authorized Purchase Order from Buyer. Title to all Furnished Property shall remain in Buyer or Buyer's licensors of the furnished hardware or software.
7. **MATERIAL AND WORKMANSHIP; MODIFICATION.** All Furnished Property incorporated in the work covered by this Order are to be new and of the most suitable grade for the purpose intended. Reference to any Furnished Property by trade name, make or catalog number shall be regarded as establishing a standard of quality, and Gateway may substitute, upon written approval by Buyer, any item, material, or process which in Gateway's judgment is equal to that named.
8. **CHANGES TO ORDERS.** Changes within the scope of this Order shall be made by written notice from Buyer to Gateway. Change notices shall be provided fifteen (15) days prior to the requested change. All changes shall be evaluated for equitable adjustment and the prices shall be adjusted accordingly. Gateway reserves the right not to accept changes that it determines, in its sole discretion, are outside the scope of this Order.

9. **DISCLAIMER OF WARRANTIES.** IN ADDITION TO THE DISCLAIMER OF WARRANTIES SET FORTH IN THE TERMS OF SALE, GATEWAY (FOR ITSELF AND ON ITS BEHALF AND OF ITS LICENSORS) DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO THE CUSTOM SOFTWARE AND HARDWARE, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, DEFECTS IN DISKETTES OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE CUSTOM SOFTWARE AND HARDWARE, AND ANY PARTICULAR APPLICATION OR USE OF THE CUSTOM SOFTWARE AND HARDWARE.
10. **ADDITIONS TO PRICE.** Any tax, fee, duty, levy, or other charge which Gateway may be required by federal, state, municipal, or other law now in effect or hereafter enacted, to withhold, collect or pay with respect to the sale, delivery, or use of any Gateway product shall be added to the price of such product.
11. **EXPORT CONTROLS.** Buyer agrees to comply with export laws and regulations of the Government of the United States that may apply to Gateway products, and to obtain any licenses required for export. Buyer agrees not to export any Gateway products without first obtaining Gateway's approval and, if required, the permission of the U.S. Departments of Commerce or State, either in writing or as provided by applicable regulation. This requirement shall survive the expiration of this Order. Buyer further agrees not to transact business with any person or firm identified by the U.S. Departments of Commerce or Treasury as being denied the right to receive any U.S. product.
12. **INDEMNITY.** Buyer agrees to indemnify and hold harmless Gateway and its licensors against any and all demands, claims, actions or causes of action, losses, damages, liabilities, costs and expenses, including, without limitation, judgments, interest, penalties, settlement amounts, court costs and attorneys' fees and expenses, whether at law or equity, asserted against, imposed upon or incurred by Gateway or its licensors arising out of or relating to any misrepresentation, breach of warranty or covenant by Buyer under this Order, infringement of any patent, trademark, copyright, trade secret or other intellectual property right or any actual or alleged act or omission of Buyer related to its performance of its obligations hereunder.
13. **PAYMENT TERMS.** Unless otherwise specified on the front of this Order, the terms of payment for purchases made under this Order are net thirty (30) days from the date of Gateway's invoice to Buyer.
14. **GENERAL.** You may not assign this Agreement without Gateway's written consent. Gateway, Inc. and its subsidiaries and affiliates are intended beneficiaries of this Agreement. If there is any inconsistency between this Agreement, the Terms of Sale and/or any other agreement included with or relating to products or services purchased from Gateway, the Terms of Sale shall govern. This Agreement may not be modified, altered or amended without the written agreement of Gateway. Any additional or altered terms attached to your Order shall be null and void, unless expressly agreed to in writing by Gateway.

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Rev. 08.20.03

## EXHIBIT A, Continued

### STANDARD TERMS OF SALE AND LIMITED WARRANTY AGREEMENT

This Agreement applies to any order, purchase, receipt, delivery or use of any products and services (collectively, "purchase") from Gateway, Inc. or any of its subsidiaries or affiliates ("Gateway") or a Gateway authorized reseller ("Reseller"), unless you enter into a separate written agreement with Gateway. **THIS AGREEMENT APPLIES TO YOUR PURCHASE UNLESS YOU NOTIFY GATEWAY IN WRITING THAT YOU DO NOT AGREE TO THIS AGREEMENT WITHIN 15 DAYS AFTER YOU RECEIVE THIS AGREEMENT AND YOU RETURN YOUR PRODUCT OR CANCEL SERVICES UNDER GATEWAY'S REFUND POLICY. THIS AGREEMENT CONTAINS A DISPUTE RESOLUTION CLAUSE. PLEASE SEE SECTION 8 BELOW.**

- 1. Payment Terms.** Advertised prices are in U.S. dollars and exclude shipping, handling and taxes unless otherwise noted. You are responsible for paying all taxes associated with your order. Gateway may change prices without notice to you before Gateway enters your order and may modify and substitute products and components without notice to you prior to shipping. Payment is due at the time stated in your invoice or when product is shipped unless Gateway has extended credit to you. Amounts not paid when due bear interest at the rate of 1.5% per month (18% per annum) or the highest rate allowed under applicable law, whichever is lower. If you financed your purchase, the loan or lease transaction is between you and your lender, independent of your purchase from Gateway, except that Gateway may, at the request of your lender, withhold technical and warranty support and other services from you.
- 2. Shipping and Title.** Gateway will arrange to ship products to you. Title to products passes to you when Gateway delivers them to the shipper and risk of loss passes to you when the shipper delivers products to the address you designate. Title to software remains with the licensor of the software. Your use of software is subject to license agreements applicable to the software. You must notify Gateway of damaged or missing items from your order within 30 days after you receive your product.
- 3. Return Policy.** You may return products and cancel unused services within 15 days after you receive your product or are invoiced for services, except that E Series systems and server products may be returned within 30 days after you receive your product. To return products and cancel services you must follow Gateway's return procedures, including obtaining a return merchandise authorization (RMA) kit and returning products within 7 days after you receive an RMA kit. Gateway will refund the original purchase price of products, unperformed services and related sales taxes. **SHIPPING & HANDLING FEES (INCLUDING RELATED SALES TAXES) ARE NOT REFUNDABLE. YOU ARE RESPONSIBLE FOR PRODUCTS UNTIL GATEWAY RECEIVES THEM. YOU WILL BE**
- CHARGED SHIPPING AND HANDLING OR RESTOCKING FEES TO RETURN PRODUCTS.** Returned products must be in the same condition as you received them. You must return all pre-loaded software with the product to obtain a refund for the product, and you may only return pre-loaded software if you choose to return the product. You may return other software only if the package has not been opened. **THIS RETURN POLICY IS NOT A WARRANTY. NOTE:** Gateway will not accept for return any products you purchased from a Reseller. Additional restrictions may apply on certain products purchased from the Gateway Accessory Store. Please visit our Help pages for more information.
- 4. Technical Support.** Gateway will provide technical support for products at no additional charge for 30 days from the date of shipment or invoice or, if longer, the period stated in your service package. For Gateway-branded personal computers and servers, the scope of technical support consists of helping you reinstall the operating system and factory-installed software and restore it to the original factory configuration. In addition, during your support period Gateway will assist you with (i) installation of any network operating system ("NOS") purchased by you from Gateway; (ii) configuration of the NOS software so that it works with the networked Gateway computers you purchased; (iii) setup of the NOS software so that it is fully integrated with other products you purchased from Gateway; and (iv) troubleshooting issues associated with the NOS software and assistance with NOS error messages. Technical support for issues beyond the scope of this basic technical support may be available under other service packages. Gateway provides technical support via on-line, telephone and other methods. Gateway may change the means through which it provides technical support at any time. Gateway does not guarantee that software will be free from errors, either in isolation or in combination with hardware.
- 5. Product Warranty.** Gateway warrants to the original purchaser or, for products purchased from a Reseller, to the original end-user that Gateway-branded products will be free from defects in materials and workmanship from the

date of shipment for 30 days from the date of shipment or invoice or, if longer, the period stated in the product manual or your service package. During the warranty period, Gateway will, at its option: (1) provide replacement parts necessary to repair the product, (2) replace the product with a comparable product, or (3) refund the amount you paid for the product, LESS DEPRECIATION, upon its return. Gateway or a third party service provider, under a separate agreement between you and the service provider, will provide labor to resolve warranty issues during your warranty period. Repair services are available at your location only if provided as part of the service package you purchased. Gateway will determine how and where repair services are provided, and you may be required to deliver your product to an authorized service location. Replacement parts or products will be new or serviceably used, comparable in function and performance to the original part or product, and warranted for the remainder of the original warranty period or, if longer, 30 days after they are shipped to you. You authorize Gateway to send replacement parts and products to an authorized third party service provider. Purchasing additional products from Gateway does not extend your warranty period. To obtain service under this limited warranty, you must follow Gateway's warranty procedures. If Gateway asks you to return defective parts or products, you must do so within 7 days after you receive the replacement parts or products. Gateway will charge you for replacement parts or products if you fail to do so. If you are a domestic U.S. customer who purchased a product directly from Gateway, Gateway will arrange to ship replacement parts or products to and from you, and will pay the shipping costs. If you live outside the United States, the details of your warranty service may vary as described below. **THIS LIMITED WARRANTY COVERS NORMAL USE. GATEWAY DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR DAMAGES CAUSED BY MISUSE, ABUSE, ACCIDENTS, VIRUSES, UNAUTHORIZED SERVICE OR PARTS, OR THE COMBINATION OF GATEWAY BRANDED PRODUCTS WITH OTHER PRODUCTS. THIS LIMITED WARRANTY DOES NOT COVER SOFTWARE OR NON-GATEWAY BRANDED PRODUCTS. ANY WARRANTY APPLICABLE TO SOFTWARE OR NON-GATEWAY BRANDED PRODUCTS IS PROVIDED BY THE ORIGINAL MANUFACTURER.**

6. **Services and Service Warranty.** The terms of services provided to you by Gateway consist of this Agreement and the additional terms stated in separate services descriptions provided by Gateway. For a period of 30 days after services are performed, Gateway warrants that services provided by it will be performed in a professional

and workmanlike manner. You should back up all files before services are performed. **GATEWAY IS NOT RESPONSIBLE FOR ANY LOSS OF YOUR DATA.**

7. **Disclaimer of Warranties; Limitation of Liability.** EXCEPT FOR THE WARRANTIES EXPRESSED IN THIS AGREEMENT, GATEWAY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER APPLICABLE LAW. THE TERM OF ANY IMPLIED WARRANTIES THAT CANNOT BE DISCLAIMED ARE LIMITED TO THE TERM OF THIS AGREEMENT. GATEWAY'S AND YOUR MAXIMUM LIABILITY TO THE OTHER IS LIMITED TO THE PURCHASE PRICE YOU PAID FOR PRODUCTS OR SERVICES PLUS INTEREST AS ALLOWED BY LAW. NEITHER YOU NOR GATEWAY IS LIABLE TO THE OTHER IF YOU OR IT ARE UNABLE TO PERFORM DUE TO EVENTS YOU OR IT ARE NOT ABLE TO CONTROL, SUCH AS ACTS OF GOD, OR FOR PROPERTY DAMAGE, PERSONAL INJURY, LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA OR OTHER CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, OTHER THAN THOSE DAMAGES THAT ARE INCAPABLE OF LIMITATION, EXCLUSION OR RESTRICTION UNDER APPLICABLE LAW. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.
8. **Dispute Resolution.** You and Gateway agree that any Dispute between You and Gateway will be resolved exclusively and finally by arbitration administered by the National Arbitration Forum (NAF) and conducted under its rules, except as otherwise provided below. You and Gateway will agree on another arbitration forum if NAF ceases operations. The arbitration will be conducted before a single arbitrator, and will be limited solely to the Dispute between You and Gateway. The arbitration, or any portion of it, will not be

consolidated with any other arbitration and will not be conducted on a class-wide or class action basis. The arbitration shall be held at any reasonable location near your residence by submission of documents, by telephone, online or in person whichever method of presentation You choose. If You prevail in the arbitration of any Dispute with Gateway, Gateway will reimburse You for any fees you paid to NAF in connection with the arbitration. Any decision rendered in such arbitration proceedings will be final and binding on the parties, and judgment may be entered thereon in any court of competent jurisdiction. Should either party bring a Dispute in a forum other than NAF, the arbitrator may award the other party its reasonable costs and expenses, including attorneys' fees, incurred in staying or dismissing such other proceedings or in otherwise enforcing compliance with this dispute resolution provision. You understand that, in the absence of this provision, You would have had a right to litigate disputes through a court, including the right to litigate claims on a class-wide or class-action basis, and that You have expressly and knowingly waived those rights and agreed to resolve any Disputes through binding arbitration in accordance with the provisions of this paragraph. This arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. Section 1, et seq. For the purposes of this provision, the term "Dispute" means any dispute, controversy, or claim arising out of or relating to (i) this Agreement, its interpretation, or the breach, termination, applicability or validity thereof, (ii) the related order for, purchase, delivery, receipt or use of any product or service from Gateway, or iii) any other dispute arising out of or relating to the relationship between You and Gateway; the term "Gateway" means Gateway, Inc, its parents, subsidiaries, affiliates, directors, officers, employees, beneficiaries, agents, assigns, component suppliers (both hardware and software), and/or any third party who provides products or services purchased from or distributed by Gateway; and the term "You" means you, or those in privity with you, such as family members or beneficiaries. Information may be obtained from the NAF on line at [www.arb-forum.com](http://www.arb-forum.com), by calling 800-474-2371 or writing to P.O. Box 50191, Minneapolis, MN, 55405.

additional or altered terms attached to your order shall be null and void, unless expressly agreed to in writing by Gateway. If any term of this Agreement is illegal or unenforceable, the legality and enforceability of the remaining provisions shall not be affected or impaired. This Agreement shall be interpreted under the laws of the State of South Dakota, without giving effect to conflicts of law rules.

9. **General.** You may not assign this Agreement without Gateway's written consent. Gateway, Inc. and its subsidiaries and affiliates are intended beneficiaries of this Agreement. If there is any inconsistency between this Agreement and any other agreement included with or relating to products or services purchased from Gateway, this Agreement shall govern. This Agreement may not be modified, altered or amended without the written agreement of Gateway. Any

**Privacy Notice.** Gateway respects our customers' right to privacy and will take all appropriate steps to keep your personal information confidential. You can review Gateway's Privacy Policy on our web site. The Privacy Policy also explains how you can update your information and elect not to receive email marketing solicitations from Gateway. In addition, Gateway obtains customer information from other companies that provide products and services to our customers. By purchasing, registering for or using other companies' products and services that are distributed by Gateway, you agree that these companies may transfer your customer information to Gateway. Gateway will maintain and use your customer information in accordance with its Privacy Policy.

**For Residents of Canada:**

1. This Agreement is subject to the applicable provisions of Canadian consumer protection laws that cannot be derogated from by private agreement.
2. **Shipping and Title** You must comply with all applicable export laws and regulations of Canada, the United States and other relevant countries if you export the Product outside Canada.
3. **Return Policy.** Gateway does not accept for return any products purchased from a reseller. To return products to Gateway, contact Gateway Canada Tech Support and follow the instructions you receive. In all cases, Gateway will not be responsible for any shipping and handling charges to and from Gateway, or paying or refunding customs fees or taxes that may be due.
4. **Language.** You confirm your request that this Agreement and all documents related directly or indirectly thereto be drafted in the English language. Vous reconnaissez avoir requis que la présente convention ainsi que tous les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise.

**For Residents of Mexico:**

1. **Shipping and Title.** You must comply with all applicable export laws and regulations of Mexico, the United States and other relevant countries if you export the Product outside Mexico.
2. **Return Policy.** Gateway does not accept for return any products purchased from a reseller. To return products to Gateway, contact Gateway Mexico Tech Support and follow the instructions you receive. To return a product purchased directly from Gateway in the United States, contact Gateway International Support in the United States and follow the instructions you receive. In all cases, Gateway will not be responsible for any shipping and handling charges to and from Gateway, or paying or refunding customs fees, taxes, or VAT that may be due.

**For All International Customers:**

The standard warranty stated above also applies to Gateway products shipped to a country outside the United States, *provided that* customers outside the United States and Canada are responsible for paying all freight charges incurred in shipping, importing/exporting and receiving replacement products and parts and for arranging and paying for the shipment of any defective part(s) back to the Gateway. All international customers are responsible for all customs duties, VAT and other associated taxes and charges.

Please send correspondence about this Agreement to:  
Gateway Customer Services Department  
610 Gateway Drive  
Attn: Warranty Services  
North Sioux City, SD 57049

## **EXHIBIT B - COMPLAINT RESOLUTION**

The following describe Gateway's Complaint Resolution Procedures. Timelines are dictated case-by-case. Gateway strives to facilitate resolutions as timely as possible.

### **A. Technical Support**

1. Procedures for Service and Equipment
  - a. The initial contact with a Gateway Technical Support Professional focuses on diagnosing symptoms to determine/implement an immediate resolution.
  - b. If the Technical Support Professional cannot resolve the issue, s/he obtains assistance from a Senior Level Support Professional.
  - c. If the Senior Level Support Professional cannot resolve the issue, it's escalated directly into the Advanced Services Lab.
2. The Advanced Services Lab technicians interface directly with Sustaining Engineering, Manufacturing, and vendors as needed to resolve the issue. The lab representative takes complete ownership of the issue and works continuously until the resolution is achieved.

### **B. Billing**

#### **Procedures for Billing Issues/Disputes**

1. When a WSCA Purchasing Entity experiences billing issues, the Purchasing Entity will contact the dedicated Sales Support member or Account Executive.
2. The Support Member or Account Executive will first look at the transaction and work directly with the Gateway billing department to resolve the issue or dispute.
3. If the issue/dispute is not readily resolved, the Support Member or Account Executive will put the Purchasing Entity in direct contact with our billing personnel. Currently, Gateway has dedicated billing personnel for territories.
4. For those issues/disputes that result from an overcharge to the customer, Gateway will provide a credit to the customer's account or a refund check.
5. In cases where the issue/dispute is found to be accurate, Gateway will work with the Purchasing Entity to understand the description of the charges and work with them to resolve the outstanding amount.

### **C. Complaint Resolution Executive Response Team (ERT)**

#### **Procedures for Complaints**

Gateway recognizes that consistently high customer satisfaction is the key to our success. Gateway also recognizes that in order to achieve this we must be able to provide immediate responses to important customer calls. Therefore, Gateway created the Executive Response Team (ERT) to handle such important customer calls. The ERT is designed to quickly engage the Gateway personnel responsible for handling the customer's specific issue/question resulting in an expeditious and satisfactory resolution of the customer's call.

## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services and their related costs.

### **A. Built-to-Order Services**

From standard services to customized support, Gateway can help maximize your investment and lower your total cost of ownership. Our award-winning support is one of the most efficient ways to ensure uptime, manage daily problems and offer exceptional service. We can help free up IT staff and streamline network management. Many of these services are priced on multiple factors such as the statement of work, travel time, quantity of units, etc. Benefits of these services include:

1. Single Point of Contact – On-site, on-line or over the phone
2. Customized System and Network Support to meet your needs
3. Free Up Your IT Staff with Gateway's end user system and application support
4. Save Time with immediate access to senior-level technicians
5. Minimize Downtime with committed 4-hour onsite response times
6. Control the Total Cost of System Repairs with extended service plans

### **B. Support & Maintenance Services**

1. Service Plans – All Gateway systems are built for reliable performance and backed by our award-winning service and support. Gateway recommends our customers assess their organization's use of technology and consider enhancing their limited warranty coverage to protect their IT staff from repair hassles and from unplanned expenses. Some of the options available to Gateway's customers include:

- a. Extended Service Plans – A cost-effective solution to solve day-to-day issues without adding to your IT workload. Extended service plans, up to five years, are a sound investment to lengthen the usable life of systems.
- b. 4-Hour On-Site Response Service for Servers – The highest level of technical support, ensuring a quick network recovery. A Gateway Server Engineer is at your location within four hours of your initial call.
  - On-Site Response Coverage for 4-Hour Response for Servers - Gateway has 4-hour response plan coverage throughout the majority of the United States
  - On-Site Replacement Service Availability
    - 5x9 service – Available five days a week, Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays
    - 7x24 service – Available seven days a week, 24 hours per day
    - Available in increments of 3, 4, or 5 years
- c. 2-Hour On-Site Response Service for Servers– The highest level of technical support, ensuring a quick network recovery. A Gateway Server Engineer is at your location within four hours of your initial call.
  - On-Site Response Coverage for 2-Hour Response for Servers - Available in selected cities across the continental United States.
  - On-Site Replacement Service Availability - 7x24x365 service – Available seven days a week 24 hours per day 365 days per year. Available coverage for up to 5 years from date of purchase.

2. Accidental Damage Protection
3. eSupport - Asset Management and e-Mail alerts
4. Personalized Help Desk Services
5. Escalation Advisor
6. System Management Services

### **C. Installation Services**

1. Installation Services for Servers
2. Installation Services for PCs
3. 90-Day Server Guarantee



**D. Custom Integrated Solutions**

1. Software Image Installation
2. Custom Hardware
3. Asset/Info Tags
4. Network Configuration
5. Delivery Logistics

**E. Training**

1. Gateway Managed Learning Platform
2. Gateway Training and Development Courses
3. Training for Office End Users
4. Training for Business and Project Management
5. Training for Database Professionals
6. Training for Network Professionals
7. Training for Professionals

**F. Additional Services**

1. Asset Recovery
2. Corporate E-mail Service
3. Network Integration Services
4. Esource
5. Gateway's Account Management Program
6. Gateway eProcurement Solutions
7. Gateway's Authorized Service Provider (Self Maintainer) Program
8. The Network Solution Provider (NSP) program
9. Gateway OS Migration Services
10. Gateway Biometrics Solution
11. Asset Management System

# WESTERN STATES CONTRACTING ALLIANCE

## MASTER PRICE AGREEMENT

for

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

HEWLETT PACKARD COMPANY

Number A63309

This Agreement is made and entered into by Hewlett Packard Company, 20555 SH 249, Houston, TX 77070-2698, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

### RECITALS

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

### INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

#### 1. Definitions

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**"Energy Star®"** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**"Equipment"** means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"ISO 14001"** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"PDA"** means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

**"Peripherals"** include but are not limited to storage, printers (including multifunction network print/fax/scanner/copying devices), scanners, monitors, keyboards, cameras (digital and video used in conjunction with computing equipment), projectors, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the Contract Administrator.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

**"Products and Services Schedule Prices"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor"** or **"Reseller Agent"** or **"Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator"** or **"URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. **Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

4. **Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. **Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

6. **Payment Provisions**

All payments under this Agreement are subject to the following provisions:

A. **Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service. In the event that the Contractor has not been notified within 30 days from delivery of product or completion of service, the product and/or service will be deemed accepted on the 31st day after delivery of product or completion of service.

B. **Payment of Invoice**

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

**11. Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement covering Warranty. In general, the Contractor warrants that:
  - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
  - 2. The Product will be suitable for the ordinary purposes for which such Product is intended,
  - 3. The Product will meet any mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
  - 4. The Product has been properly designed and manufactured for its intended use, and
  - 5. The Product is free of significant defects in material and workmanship.



6. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:

- a) HP global limited warranty statement for NonStop products which can be found on the Contractor's website at:  
<http://H71033.www7.hp.com/page/WARRANTY.html>. This warranty is for Unix Products.
- b) HP All other product Hardware Limited warranty can be found on the Contractor's website at:  
<http://h20000.www2.hp.com/bizsupport/TechSupport/ProductRoot.jsp?>

- B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

**12. Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.

**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
  - Band 1: File/Print Servers, Mid-Range Servers
  - Band 2: Desktops, Laptops, Tablet PCs,
  - Band 3: Printers, High speed; Medium speed; Desktop; Laptop
  - Band 4: Storage Solutions
  - Band 5: PDA's
  - LAN equipment and related software.
  - General Purpose Software
- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to make reasonable efforts to deliver Products to Purchasing Entities within 20 business days or less after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order where the timeframe for required delivery is greater than 20 business days or as otherwise mutually agreed to by the Purchasing Entity and Contractor.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement,

insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which its primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

Unless prohibited by state law, or otherwise mutually agreed by the Contractor and Participating Entity or Participating State under a Participating Addendum, the Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
  - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.

- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is

confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Debra Lee  
Public Sector Contract Manager  
Hewlett Packard Company  
2055 SH 249  
Houston, TX 77070  
Tel: 847.537.0344  
Fax: 281.927.5213  
Email: Debra.Lee@hp.com

Copy to:  
Todd Reed  
Public Sector Contract Manager  
Hewlett Packard Company  
2055 SH 249  
Houston, TX 77070  
Tel: 281.927.3808  
Fax: 281.927.8883  
Email: Todd.Reed@hp.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtitled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.



3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;

2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
  1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

50. **Prohibition Against Gratuities**
- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
  - B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.
51. **Antitrust**
- The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.
52. **Right to Publish**
- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
  - B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.
53. **Performance While Dispute is Pending**
- Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.
54. **Hazardous Substances**
- To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.
55. **Customer Satisfaction/Complaint Resolution**
- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
  - B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is 143007617.

E-Rate qualifying products are as follows:

HP ProLiant servers for use as DHCP servers, Domain name servers, E-mail servers, Terminal servers, and Web servers (for external users).

HP ProCurve network electronics: Routers, Switches, Hubs, and Wireless networking products.

HP Services: Installation services for eligible products, Maintenance services for eligible products, Infrastructure design and project support for E-rate eligible projects.

Other enterprise offerings: Rapid Deployment Pack for assistance in server installation, UPS when used in conjunction with eligible servers, NICs when used in conjunction with eligible servers, Factory Express configuration of eligible servers, Insight Manager 7 SP2/NIMBUS training for personnel tasked with server installation and maintenance

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. HEWLETT PACKARD COMPANY**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]

Title: Contracts Mgr

Date: July 8<sup>th</sup> 2004

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke

Title: Acquisition Management Specialist

Date: 7/9/07

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative

By: [Signature]

Date: 9 July 04

## EXHIBIT A - ADDITIONAL WARRANTIES

HP Global Limited Warranty Statement for NonStop Products can be found on the Contractor's website at: <http://H71033.www7.hp.com/page/WARRANTY.html>. This warranty is for Unix products. CarePags, installation and implementation services, maintenance, support, extended or uplifted warranty is based on HP's standard Support terms and conditions.

All other product standard warranty can be found on the Contractor's website at: <http://h20000.www2.hp.com/bizsupport/TechSupport/ProductRoot.jsp?>

The following warranties also apply.

### A. WARRANTY

- a) Product warranty period and additional information is available with Products, on quotations, or upon request.
- b) Products purchased from HP will receive the standard warranty in the country of purchase. If Customer moves such Products to another country where HP has Support presence, then Customer will receive the destination country standard warranty.
- c) Customer may receive a different warranty when the Product is purchased as part of a system. HP reserves the right to change the warranty. Such changes will affect only new orders.
- d) The warranty period begins on the date of Delivery, or the date of installation if installed by HP. If Customer schedules or delays installation by HP more than thirty (30) days after Delivery, the warranty period begins on the 31st day after Delivery.
- e) If Customer transfers a Product to another user, warranty service is available to that user for the remainder of the warranty period.
- f) HP warrants HP hardware Products against defects in materials and workmanship. HP further warrants that HP hardware Products conform to Specifications.
- g) HP warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the Device designated by HP. HP further warrants that HP owned standard Software will substantially conform to Specifications. HP does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- h) HP does not warrant that the operation of Products will be uninterrupted or error free.
- i) If HP receives notice of defects or non-conformance to hardware Specifications, or substantial non-conformance to HP owned standard Software Specifications during the warranty period, HP will, at its option, repair or replace the affected Products. If HP is unable, within a reasonable time, to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted, Customer will be entitled to a refund of the purchase price upon prompt return of the Product to HP. Customer will pay expenses for return of such Products to HP. HP will pay expenses for shipment of repaired or replacement Products.
- j) HP warrants that HP Support will be provided in a professional and workmanlike manner.
- k) Some newly manufactured HP Products may contain and HP Support may use remanufactured parts which are equivalent to new in performance.
- l) The warranties provided herein will apply only to those Products and Support which are branded by HP with an HP trademark ("HP Branded"). HP does not warrant any third party Products or Support even if included with other HP Branded Products or Support. Furthermore, HP provides all such third party Products and Support AS IS. However, the original manufacturers of suppliers may provide their own warranties as specified in the documentation accompanying such third party Products and Support.
- m) The above warranties do not apply to defects resulting from:
  - 1) improper or inadequate maintenance by Customer;
  - 2) Customer or third party supplied software, interfacing or supplies;
  - 3) unauthorized modification;
  - 4) improper use or operation outside of the Specifications for the Product;
  - 5) abuse, negligence, accident, loss or damage in transit;
  - 6) improper site preparation; or
  - 7) unauthorized maintenance or repair.

- n) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, HP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

## **B. Support services and Uplift and Extended Warranty**

### **1. DEFINITIONS AND SERVICES INCLUDED**

- a) "HP System Support Upfront Services", "HP System Support Options", "HP Care Pack", or simply "HP Upfront Services" refers to HP's offerings for hardware, software, network, SAN (Storage Area Network), and Mission Critical support. HP Upfront Services are available for purchase by the PURCHASER either at the time of Product purchase, or prior to installation of such Products for which HP Upfront Services are being purchased.
- b) "HP System Support Services", "Compaq Services" or simply "HP System Support" refers to HP's offerings for hardware, software, network, SAN (Storage Area Network), and Mission Critical support. HP System Support is available on a contractual basis either for a fixed period or on an open-ended ("evergreen") basis (note that these are not part of HP's Upfront Services offering, as defined above.) HP System Support Services are also referred to as "contractual support".
- c) Certain features of HP Upfront Services and HP System Support Services are optional and may be purchased upon request by PURCHASER. Standard and optional features for HP System Support Upfront Services and HP System Support Service, covering HP and specified non-HP systems, are described in the applicable Technical Data sheet and/or Service Description and will be provided pursuant to the specifications set out therein. Such Technical Data sheets and/or Service Descriptions become an integral part of this Exhibit.
- d) "Support Services" will mean the collective service offering described in 1. a) and 1. b) above.

### **2. PREREQUISITES**

HP, in its reasonable opinion, will make a determination regarding whether PURCHASER adequately meets the prerequisites for Support Services as outlined in this Exhibit.

- a) Uniform Coverage. Unless otherwise agreed by HP, all hardware and software products that constitute the minimum system configuration (a collection of hardware and software that is designated to operate as a functional unit), along with all other such hardware and software products that may be included or attached to such system configuration, must be covered at the same Support Services coverage level. Similarly, the duration period must be the same for all hardware and software products in a particular system for which Support Services is purchased. (i.e., must be coterminous).
- b) Connectors and Cables. All products covered under Support Services must be interconnected by cables or connectors listed in the appropriate manufacturer's documentation as compatible with the system. For products that do not meet this requirement, service is available at the applicable standard service rates for such products.
- c) Software Support. All HP systems for which execution of diagnostic tests is software-dependent must, at a minimum, be covered by Support Services that provide periodic software updates.
- d) Right to Copy Documentation. PURCHASER may copy documentation updates for use with other systems covered by the Support Service that provides software support.
- e) Software Licenses. PURCHASER can purchase Support Services only for HP software for which PURCHASER has rightfully acquired an appropriate HP software license (pursuant to licensing terms outlined above).
- f) Designated Callers and Training Requirements. All Response Center callers must be generally knowledgeable and trained in system administration, system management, and if applicable, network administration/network management in order to be an authorized caller. HP has the right to review and discuss an authorized caller's prior training and/or experience to determine initial eligibility. In addition, if issues should arise during Response Center interaction that, in HP's reasonable opinion, may be a result of such caller's lack of general experience and/or training, HP reserves the right to request replacement of such caller. Access to HP's Response Center is limited to: PURCHASER system manager(s) for the operating system and subsystem software, if applicable, the network operator for the network, and for Support Services that include SAN coverage; after normal business hours authorized caller; including storage network operator and alternate; if applicable, application software manager and alternate; and if applicable, additional HP Response Center callers, which may be subject

to an additional charge. In the absence of any of these managers, the HP Response Center is available for their designated alternates. In the event of a change to the designated caller(s), PURCHASER will inform HP of such replacement within a reasonable time. All Response Center callers must have the proper system identifier, such as the system handle or system serial number, when initiating a call to the Response Center.

- g) Remote Support. For HP to provide remote support, PURCHASER must give authorization and provide access to a remote support connection, either internet based or qualified modem, as well as access to one voice-grade telephone line and one data-quality telephone line or network with terminations, or equivalent, near the system. For storage devices using Continuous Track or Instant Support Enterprise Edition, a data quality phone line must be provided for "phone-home" diagnostic technology capability. For some service levels, PURCHASER must allow HP to install and provide HP adequate space for and access to HP-provided equipment, as well as provide connectivity as specified in the applicable Technical Data sheet and/or Service Description for the Support Service.
- h) HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain Support Services. With a Web browser, PURCHASER can access the specified areas of the HP IT Resource Center. FTP access is required for some electronic services. Designated callers who submit HP Response Center calls via the HP IT Resource Center must meet the same training requirements set forth in 2. f) above. Use of HP support tools available via the HP IT Resource Center requires agreement to the HP Support Tool License Terms.
- i) Country Boundaries. All systems supported by one PURCHASER system manager must be located within the same country.
- j) Eligibility. To be eligible for certain coverage levels and Support Services offerings, PURCHASER may be required to meet a minimum monthly billing amount specified by HP.
- k) Central Order Group (selected products ONLY). This provision only applies to PURCHASERS who have purchased certain Support Services in regards to the designation of the Central Order Group by HP. The Central Order Group is defined as the particular system within a grouping of systems in a PURCHASER's environment that has the fastest processor speed and largest number of users. The Central Order Group must have only one PURCHASER system manager. Unless otherwise agreed, HP will designate which system constitutes the Central Order Group based upon the criteria defined above. Except for certain designated mission critical environments, both the Central Order Group and add-on order groups (connected systems) must be of the same HP or non-HP product family and must collectively have the same PURCHASER system manager.

### 3. SERVICE LIMITATIONS

- a) Hardware, Software, SAN and Network Support. Any services involving hardware, software or network-related problems not covered by Support Services, will be subject to the applicable standard services rates for such products.
- b) Maximum Use Limitations. For those products that have a maximum usage limit, such as a specified page limit, as set forth in the applicable Operating Manual, Technical Data Sheet, or Service Description, any such Products operated in excess of their maximum usage rate are not eligible for Support Services, but can be serviced at the applicable standard service rates for such products.
- c) Interfaces and Accessories. HP may cover cables, connectors, accessories and interfaces under the same hardware service level purchased for the products with which they are used.
- d) Supported Software Versions. Unless otherwise agreed by HP, HP provides HP Support Services only for the current and immediately preceding versions of HP software, and only when the software is used with hardware that is included in HP-specified configurations. A version is defined as a release of a software product that contains new features, enhancements, and maintenance updates. If support coverage lapses, additional fees may be required to resume support coverage. HP will support specified versions of selected non-HP software, but will not support the software any longer than the vendor supports it. For non-HP software, HP provides Support Services only for software versions that are documented as supported on specified configurations. HP will be under no obligation to provide Support Services should it be required due to alterations or modifications to code.
- e) Non-HP Software. For non-HP Software, Support Services are limited, unless otherwise specified by HP, to telephone assistance, and if available to HP from the third-party software vendor or other appropriate provider, patches, workarounds, and updates.
- f) HP Software on Non-HP Systems. Support Services for certain HP software products used with designated non-HP systems is limited to the support deliverables specified in the applicable Technical



Data Sheet and/or Service Description. PURCHASERS must maintain HP-supported non-HP software at a code revision level specified by HP.

- g) Network Software Coverage without Network Support. Support for HP network software that provides multivendor node connectivity is limited to product-usage and problem-solving assistance and software update materials, unless network support is purchased.
- h) Travel Zones. PURCHASER sites located beyond one hundred (100) miles (160 kilometers), with the exception of HP's mission critical Support Services offering, in which case for those sites located beyond fifty (50) miles, of a primary HP support office may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.
- i) Availability. Some Support Services features and coverage levels are subject to local availability.
- j) Consumables, User Replaceable Parts, Maintenance Kits, and other Supplies. Support Services do not include the provision, return/replacement, or installation of supplies or other consumable items including but not limited to, accessories, operating supplies, magnetic media, print heads, ribbons, toner, and batteries.
- k) Out of Coverage Hours. PURCHASER requests for Support Services, or for HP installation and configuration services, that are scheduled after HP's locally defined, standard business hours may be subject to HP standard after hours service rates (unless PURCHASER has specifically purchased the applicable after hours coverage for such Support Service).

#### 4. PURCHASER RESPONSIBILITIES

- a) Product List. PURCHASER will be responsible for the overall listing of hardware and software products under Support Services, including the accuracy of such listing, the location of the products, serial numbers, the HP-designated system handle(s), and their associated coverage levels, including any subsequent changes to such listing, as required, throughout the applicable Support Services coverage period.
- b) Access. PURCHASER must provide HP with the following:
  - 1) Access to the products covered under HP Upfront Services and HP System Support.
  - 2) Adequate working space and facilities within a reasonable distance of the products.
  - 3) Access to and use of all information, internal resources, and facilities determined necessary by HP to service the products.
  - 4) For the scheduled support level, PURCHASER must designate a single work area acceptable to HP at PURCHASER site. This area must include shelves or racks for incoming and outgoing products, adequate open bench workspace, adequate power and lighting, and access to a telephone. Before having a product serviced under the scheduled support level, PURCHASER must:
    - a) Maintain a written log of model number, serial number, and current failure symptoms and be prepared to provide this information to HP upon request.
    - b) Locate all failed units to be repaired during a scheduled visit at the designated work area before the HP PURCHASER Engineer arrives.
    - c) Call HP the workday before the day of the scheduled visit to provide information regarding the number and type of products requiring repair.
- c) Operating Procedures. PURCHASER must follow routine operating procedures as specified in the manufacturer's product operation manual(s).
- d) Diagnostic/Maintenance Software (selected products). HP will require the use of certain system and network diagnostic and maintenance programs (herein after referred to as "Proprietary Service Tools") for delivery of Support Services under certain coverage levels. These Proprietary Service Tools which remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to, remote fault management software, High Availability Observatory ("HAO"), Insight Manager, Instant Support ("IS"), and Instant Support Enterprise Edition ("ISEE"). Such tools may reside on the PURCHASER's system(s) or site(s), and PURCHASER may only use such tools for the purposes covered by HP's permission, and only during the term of the applicable Support Service coverage period. PURCHASER may not sell, transfer, assign, pledge, or in any way encumber or convey these Proprietary Service Tools. PURCHASER will also be required to:
  - 1. allow HP to keep such Proprietary Tools resident on PURCHASER's system(s) or site(s), and assist HP in running these Proprietary Service Tools,
  - 2. install, maintain, and support such Proprietary Service Tools, including any required updates and patches,

3. use the electronic data transfer capability to inform HP of events identified by the software, and
4. if required, purchase HP-specified modem and/or data sets for systems having remote diagnosis service. Upon termination of Support Services, PURCHASER will return the Proprietary Service Tools and/or allow HP to remove these Proprietary Service Tools.
- e) Revision Levels. PURCHASER must maintain all associated system hardware and firmware at the latest HP-specified configuration and code revision level.
- f) Telecommunication Charges. PURCHASER is responsible for all telecommunication charges associated with using HP IT Resource Center and with installing and maintaining ISDN links and Internet connection, or HP-approved alternatives, to the HP Response Center, including as they relate to the HAO, or other Proprietary Service Tools.
- g) Temporary Procedures. PURCHASER is responsible for implementing temporary procedures or workarounds while permanent solutions are being sought.

#### 5. SOFTWARE LICENSE AND COPYRIGHTS

- a) Updates. Software updates or revisions furnished in connection with Support Services are subject to the license terms in effect for such Software on the date HP ships the update to the PURCHASER. Any standard commercial software product furnished under such Support Services is subject to the standard commercial Software license terms applicable to the product.
- b) HP Update Ownership. PURCHASER acknowledges that it does not own and has no right to, title to, or interest in the updates except as set forth in the applicable HP Software License Terms.
- c) Copyright and Trademark Notices. PURCHASER agrees to reproduce and conspicuously affix copyright and trademark notices from the original software or documentation on each copy of an update that PURCHASER makes or obtains from an electronic data source.

#### 6. MULTIVENDOR NETWORK COVERAGE

- a) Affiliates. HP has developed working relationships with select vendors, known as Affiliates, who assist in the delivery of multivendor support. For purposes of HP's appointment as a Special Agent during multivendor coverage, non-Affiliate refers to other vendors of products in PURCHASER's network.
- b) Performance of Affiliates and Non-Affiliates. HP is not liable for performance or non-performance of Affiliates and non-Affiliates, their products, or their support services.
- c) Operational Network. HP must verify PURCHASER's network as fully operational before Support Services, including LAN/WAN network, and Storage Network Environmental support coverage begins. This prerequisite is deemed met if Support Services coverage commences upon completion of HP's network configuration or assessment services. Otherwise, HP performs verification at the applicable standard service rates for such products.
- d) Supported Connections. HP must agree upon all network connections and products covered under Support Services with network coverage.
- e) Service Requests. Prior to or after placing a service request with HP, PURCHASER will run HP or non-HP product or network diagnostic self-test programs, as appropriate. PURCHASER must then contact the appropriate product vendor if a specific product is found to be at fault. Upon request from HP during a service call, PURCHASER will enable the connection to HP via the network support tool if applicable.
- f) Network Information. PURCHASERS without the HP network support tool installed must identify current product version numbers and system configuration information for all products on the network. PURCHASER must notify HP when major topology changes occur on the network.
- g) Non-HP Service Contracts. To take advantage of Support Services benefits, PURCHASER must purchase service contracts from Affiliates and non-Affiliates that maintain appropriate support service levels for non-HP products.

#### 7. MULTIVENDOR NETWORK/WARRANTY MAINTENANCE MANAGEMENT

Should PURCHASER purchase Support Services that include multivendor network coverage and/or warranty maintenance management services that require HP to act as a special agent, additional terms and conditions will apply. PURCHASER and HP will negotiate in good faith such mutually agreeable additional terms. HP will be under no obligation to act as PURCHASER's special agent until such time as these additional terms are agreed upon and executed between the parties.

## 8. MISCELLANEOUS

- a) **SubHPs.** Notwithstanding anything to the contrary in the terms of the contract, HP reserves the right and PURCHASER consents to HP's use of subHPs to assist in the provision of Support Services as HP deems appropriate, without notice to PURCHASER.
- b) **Replacement Parts.** Replacement parts provided under Support Services may include new parts, equivalent to new parts, parts that are functionally equivalent or superior to the replaced part, or whole unit replacements. Replaced parts become the property of HP, unless otherwise agreed, and provided that PURCHASER pays the applicable charge(s) associated for retaining such replaced part(s).
- c) **Attachments.** For certain Support Services, PURCHASER may be required to execute additional Attachments to this Exhibit.
- d) **Order of Precedence.** The order of precedence will be as follows: The contract terms and conditions, this Exhibit, the Technical Data Sheet(s), and the Service Description(s).
- e) **HP Product Warranty Upgrade for ninety (90) day on-site warranty or one (1) year "Return to HP" converted to ninety (90) Day on-site warranty.** If PURCHASER purchases HP Upfront System Support Services or HP System Support Options for a HP hardware product that carries either a ninety (90) day on-site or a one (1) year return-to-HP warranty converted to ninety (90) day on-site warranty, and the associated Upfront System Support Services or System Support Option service level purchased by PURCHASER does not provide a better service level than the base ninety (90) day warranty, the service level associated with the base warranty will apply for such ninety (90) days. Thereafter, the service level and response time will revert to those defined by the Upfront System Support Services or HP System Support Option purchased by the PURCHASER. A one (1) year return-to-HP warranty must be converted to a ninety (90) day on-site warranty to qualify. Additionally, days of coverage and on-site response times can be upgraded for an additional charge during the warranty period for most hardware products.
- f) **Warranty Status of Non-HP Products.** Irrespective of a particular non-HP product's warranty status, such Non-HP product(s) under Support Services will be serviced in accordance with this Exhibit, and any applicable Attachments.
- g) **Cancellation.** In the event any prepaid Support Services are canceled, PURCHASER will receive a pro-rata refund only for the unused prepaid services, less any applicable early termination fees, if such fees apply as set forth in an executed addendum or attachment to this Exhibit.
- h) **Financing.** If Support Services are financed as part of an HP Financing Agreement, the HP Financing Agreement terms and conditions regarding cancellation will govern.

## EXHIBIT B - COMPLAINT RESOLUTION

HP will work with the WSCA states to customize the procedures to the states' specific escalation requirements. HP's formal service escalation procedure is described in detail below.

### A. Order and Billing Escalation Procedures

HP's Customer Services Account Teams place a high emphasis on effectively managing our customers' open orders. We have developed internal processes and training efforts to address this important subject. Customer Services ASRs (Account Support Representatives) are trained to effectively manage the variety of open order reports available through HP's order management system. Team Leaders work with their Customer Services Account Teams to ensure all team members are knowledgeable and comfortable with the multiple sourcing options available to them.

Account Support Representatives are required to spend part of each day reviewing and working all open order reports. When the ASRs have completed their first pass through these reports, they are required to inform their supervisor that they have completed their review and then get help with any issues needing expediting. Team Leaders are required to check this process as part of their daily checklist.

Customer Services team members continuously monitor manufacturing issues with customer orders. The Customer Services Account Team works to resolve product issues as soon as possible. If the issue is not completely resolved within 24 hours of e-mail receipt, the team will notify the appropriate HP Direct manager.

Customer Services management and sales staff meet regularly to identify and resolve any order management outstanding issues. Issues are logged, resolutions proposed, and follow-up tracked. The goal of these meetings is to set the HP "team" expectations or vision, review issues keeping us from realizing that vision, and then put plans in place that get us to the level of service and confidence we and our customers demand.

Turnaround for return processing can be impacted by many factors that make it difficult to measure on average. For straightforward items that don't require a return shipment, it may take up to five days for processing. When items are returned in shipment via a call tag, the product needs to be returned within 30 days. The Account Support team is charged with ensuring that all returns processing and related issues are completed within sixty days.

Generally credits are applied directly against the open amount they represent on the order invoice. When credits are issued for invoices that have already been paid, the credit will be applied to another open invoice. If a Purchasing Entity needs to apply credits to specific open invoices, the Account Support Team will work with the Purchasing Entity and a Credit Manager to coordinate these specific designations. The Account Support Team will act as the first point of contact for credit issues.

### B. Invoicing

Just as the purchase order information follows the path of the product during fulfillment, this information is also used to process the invoice. Once the order information is electronically entered by either the Purchasing Entity or its Customer Services Account Team, depending on how the purchase order is submitted, this same electronic order information is directed to the invoice, eliminating the potential for manual errors during processing. Immediately prior to invoice processing, the electronic delivery information from the purchase order is provided to the chosen carrier. Once the product is with the carrier, the invoice is processed and sent to the Purchasing Entity. At this time, HP can also send an automated e-mail notification to the Purchasing Entity informing you of the expected delivery date.

Special contract pricing is maintained on a per customer basis within the order fulfillment system. Since invoices are generated from the order management system, which uses the same information provided at the time of the order submittal and includes all of the subsequent processing information, HP fully expects that our invoices will be 100 percent accurate.

Billing for customization services, such as imaging and asset tagging services, may be billed either as part of the configuration price, or as a separate line item on the same invoice. As with other billing disputes for product and product-related services, the Customer Services Account Team is the primary point of contact.

### **C. Service Escalation Procedures**

HP makes provision for two types of escalation. The first type, referred to as call escalation, relates to escalating specific service events for more timely resolution. The second type, referred to as issue resolution, relates to customer satisfaction issues pertaining to the contract. Both types of escalation are described in the paragraphs that follow.

#### **1. Call Escalation**

HP's call escalation procedures provide a mechanism for involving successively higher levels of management within its Customer Services organization. These procedures are automated and non-discretionary and ensure the fastest possible resolution. If a service call logged during coverage hours exceeds a predetermined limit for on-site repair time, the call escalation process is automatically activated and management is notified. The Service Delivery Manager and the Service Account Manager review the situation, and additional resources are applied as necessary until the problem is resolved to the customer's satisfaction. Each system and peripheral has its own strategy and procedure, with established parameters for escalation.

If necessary, the escalation process continues through the development of customized action plans and timelines, formal management reviews, and engagement of territory- or corporate-level resources. At the upper levels, there are daily reviews and updates until closure.

### **D. Issue Resolution**

In the event of a customer satisfaction issue, the customer's first point of contact is normally the program manager or the account manager. This individual engages the necessary resources in the local service delivery unit, obtains the support of management in the local customer business district, and keeps the concerned sales organization apprised of the progress of the resolution. Most issues are resolved readily at the local level. If necessary, the situation is elevated to executive management at the territory or U.S. level.

## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services. Costs are shown on the Contractor's PSS.

### **A. Customer Services**

1. Implementation Planning and Roll-out
2. Asset Management
3. Environmentally Safe Reclamation/Disposal of Used Parts
4. Installation, Setup, and Test
5. On-Site/Off-Site hardware and software support
6. Extended Warranties with enhanced services and response times
7. Service Level Agreement Definition

### **B. Education and Training**

1. Packaged Courses
2. IT Course Development
3. Customer Content Course Development
4. Virtual Classroom

## EXHIBIT D - SOFTWARE LICENSE TERMS

### 1. DEFINITIONS

- a) "License Fee" means the fee or fees designated by HP for Use of Software. Different License Fees may apply to particular Software if more than one Software License is available for that Software.
- b) "Products" means hardware, Software, documentation, accessories, supplies, parts and upgrades that are determined by HP to be available from HP upon receipt of Customer's order.
- c) "Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device") and related documentation. Software is either a separate Product, included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal operation ("Firmware").
- d) "Software License" means the Software license grant and general license terms set forth herein. Each Software License has a corresponding License Fee.
- e) "Use" means storing, loading, installing, executing, or displaying Software on a Device.

### 2. LICENSE GRANT

- a) In return for the License Fee, HP grants Customer a non-exclusive license to Use the object code version of the Software listed in Customer's order in conformance with:
  - 1) the terms set forth herein; and
  - 2) Use restrictions and authorizations for the Software specified by HP in its quotation, invoice or terms that accompany the Software; and
  - 3) HP's third party suppliers' terms that accompany the Software.In the event of a conflict, the third party suppliers' terms that accompany the Software will take precedence over the Use restrictions and authorizations specified by HP and the terms set forth herein, and the Use restrictions and authorizations specified by HP will take precedence over the terms set forth herein.
- b) Unless otherwise specified, in return for the applicable License Fee, HP grants Customer a license to Use one copy of the Software on one Device at any one time.
- c) Unless otherwise specified, all Software Licenses will be perpetual unless terminated or transferred in accordance with Section 3. g).
- d) If Customer is an HP authorized reseller, Customer may sublicense the Software to an end-user for its Use or (if applicable) sublicense the Software to an HP authorized reseller for subsequent distribution to an end-user for its Use. These sublicenses must incorporate the terms of this Software License in a written sublicense agreement, which will be made available to HP upon request. If Customer is not an HP authorized reseller, Customer may not sublicense the Software unless otherwise agreed to by HP in writing.

### 3. GENERAL LICENSE TERMS

- a) Software is owned and copyrighted by HP or by third party suppliers. Customer's Software License confers no title or ownership and is not a sale of any rights in the Software. Third party suppliers may protect their rights in the Software in the event of any infringement.
- b) Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software on a backup Device, provided that copies and adaptations are used in no other manner and provided further that the Use on the backup Device is discontinued when the original or replacement Device becomes operable.
- c) Customer must reproduce all copyright notices in or on the original Software on all permitted copies or adaptations. Customer may not copy the Software onto any public or distributed network.
- d) Bundled Software or Firmware provided to Customer may only be used when operating the associated Device in configurations as sold or subsequently upgraded by HP. Customer may transfer Firmware only upon transfer of the associated Device.
- e) Updates, upgrades or other enhancements are available under HP Support agreements. HP reserves the right to require additional licenses and fees for Use of the Software on upgraded Devices.
- f) Customer will not modify, disassemble or decompile the Software without HP's prior written consent. Where Customer has other rights under statute, Customer will provide HP with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the

Software unless necessary for legitimate use of the Software.

- g) Customer's Software License is transferable subject to HP's prior written authorization and payment to HP of any applicable fee(s). Upon transfer of the Software License, Customer will immediately deliver all copies of the Software to the transferee. The transferee must agree in writing to the terms of Customer's Software License. All Software License terms will be binding on involuntary transferees, notice of which is hereby given. Customer's Software License will automatically terminate upon transfer.
- h) HP may terminate Customer's or any transferee's or sublicensee's Software License upon notice for failure to comply with any applicable Software License terms. Immediately upon termination, the Software and all copies of the Software will be destroyed or returned to HP. Copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's or transferee's or sublicensee's database, will be removed and destroyed or returned to HP. With HP's written consent, one copy of the Software may be retained subsequent to termination for archival purposes.
- i) If the software is licensed for use in the performance of a U.S. government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer software, computer software documentation and technical data for commercial items are licensed under vendor's standard commercial license.

#### 4. GENERAL

- a) Customer may not assign any rights or obligations hereunder without prior written consent from HP.
- b) Customer who exports, re-exports or imports HP licensed Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance if Customer is in violation of any applicable laws or regulations.
- c) Disputes arising in connection with this Agreement will be governed by the laws of the country and locality in which HP accepts the order.
- d) If any term or provision herein is determined to be illegal or unenforceable, the validity or enforceability of the remainder of the terms or provisions herein will remain in full force and effect.
- e) Except as specifically provided in Section 2. a) 2), these HP Software License Terms supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. These HP Software License Terms may not be changed except by an amendment signed by an authorized representative of each party.



WESTERN STATES CONTRACTING ALLIANCE  
MASTER PRICE AGREEMENT  
for  
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES  
IBM CORPORATION  
Number A63311

This Agreement is made and entered into by IBM Corporation, 4263 Commercial Street, Salem, OR, 97302, ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided. No type of Lease transactions are allowed through this Agreement.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

**1. Definitions**

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**"Customer-set-up Machine"** is an IBM Machine that the Purchasing Entity installs according to IBM's instructions.

**"Date of Installation"** is the following:

1. For an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it, or, if the Purchasing Entity defers installation, makes it available to the Purchasing Entity for subsequent installation by IBM;
2. For a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and
3. For a Program –
  - a. basic license, the later of the following:
    - (i) the day after its testing period ends; or
    - (ii) the second business day after the Program's standard transit allowance period,
  - b. copy, the date (specified in a Transaction Document) on which IBM authorizes the Purchasing Entity to make a copy of the Program, and
  - c. chargeable component, the date the Purchasing Entity distributes a copy of the chargeable component in support of the Purchasing Entity's authorized use of the Program.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**"Energy Star®"** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**"Enterprise"** is, if the Purchasing Entity is a state or a state agency, institution or department, the state of the Purchasing Entity; if any other political subdivision (colleges, school districts, counties, cities, etc.,) the Enterprise is the political subdivision.

**"Equipment"** means workstations, desktop, laptop (includes Tablet PC's), and handheld (PDA) devices, servers, computing hardware, including upgrade components such as memory, storage drives, and spare parts.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"ISO 14001"** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**"Licensed Internal Code"** (called "LIC") is Machine Code used by certain Machines IBM specifies (called Specific Machines).

**"Machine"** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the Purchasing Entity.

**"Machine Code"** is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials"** are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to the Purchasing Entity as part of a Service. The term "Materials" does not include Programs, Machine Code, or LIC.

**"Materials Management Division" or "MMD"** means the procurement office for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Non-IBM Program"** is a Program licensed under a separate third party license agreement

**"Other IBM Program"** is an IBM Program licensed under a separate IBM license agreement, e.g., IBM International Program License Agreement.

**"Participating State"** or **"Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"PDA"** means a Personal Digital Assistant. Refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which are later entered into a larger computer. **NOTE: For this Agreement, all Tablet PC's are NOT considered PDA's.**

**"Peripherals"** include but are not limited to storage, printers (including multifunction network print/fax/scanner devices), scanners (used in conjunction with computing equipment), monitors, keyboards, uninterruptible power supplies and accessories. Adaptive/Assistive technology devices are included as well as configurations for education. A third party may manufacture peripherals. The Contractor shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, peripherals, LAN hardware Software, and Network Storage devices, but not unrelated services.

**"Products and Services Schedule Prices"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Program"** is the following, including the original and all whole or partial copies:

1. machine-readable instructions and data;
2. components;
3. audio-visual content (such as images, text, recordings, or pictures); and
4. related licensed materials.

The term "Program" includes any IBM Program, or Non-IBM Program that IBM may provide to the Purchasing Entity. The term does not include Machine Code, LIC, or Materials.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor"** or **"Reseller Agent"** or **"Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.**

**"Specifications"** is a document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications."

**"Specified Operating Environment"** is the Machines and programs with which a Program is designed to operate, as described in the Program's Specifications.

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

## 2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

## 3. **Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is

available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

**4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

**5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

**6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

**A. Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. Acceptance shall occur contemporaneous with passage of title as stated in paragraph 3 above.

**B. Payment of Invoice**

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments are due upon receipt and payable within thirty (30) days, or in accordance with the applicable laws of the Purchasing Entity.
2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".
3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes.

Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota or on September 1, 2004, whichever is later, through August 31, 2007 (3 years). The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available

shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order, except for Services already performed or Products already delivered.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

**11. Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. In general, the Contractor warrants that:
  - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
  - 2. The Product will meet any specifications provided in writing to or otherwise actually know by the Contractor when it advised the Purchasing Entity in writing about the Product's ability to meet those mandatory specifications.
  - 3. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
  - 4. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
    - a) Warranty for IBM Machines
    - b) Warranty for IBM Programs
    - c) Warranty for IBM Services
    - d) Warranty for Systems
- B. If Contractor modifies the warranties described in Exhibit A, even 10 days prior written notification to the Contract Administrator, the State may terminate the Contract at its sole discretion because a unilateral change in warranty terms may be contrary to the State's best interests. Such a termination is considered caused by the unilateral action of the Contractor and not by the State's protection of its interests.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.



**12. Patent, Copyright, Trademark and Trade Secret Indemnification**

For purposes of this section, the term "Product" includes Materials, Machine Code and LIC.

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against (a) any claim that any Product provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and (2) any claim arising from any alleged trade secret misappropriation by Contractor in the United States or Puerto Rico, and Contractor shall pay all costs, damages and attorneys' fees that a court finally awards or that are included in a settlement approved by Contractor as a result of any such claim. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

- B. If any Products become, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1. Provide a Purchasing Entity the right to continue using the Products;
2. Replace or modify the Products or Services so that it becomes non-infringing; or
3. Accept the return of the Products or give the Purchasing Entity a credit equal to: a) for a Machine, the Purchasing Entity's net book value provided it has followed generally-accepted accounting principles; b) for a Program, the amount paid by the Purchasing Entity or 12 months charges (whichever is less); and c) for Materials, the amount paid by the Purchasing Entity to IBM for the creation of the Materials.

This is IBM entire obligation to the Purchasing Entity regarding any claim of infringement.

- C. IBM has no obligation regarding any claim based on any of the following:

1. Anything the Purchasing Entity provides which is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the Purchasing Entity or by a third party on the Purchasing Entity's behalf;
2. The Purchasing Entity's modification of a Product, or a Program's use in other than its Specified Operating Environment;
3. The combination, operation or use of a Product with other products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation of use of a Product for the benefit of a third party outside the Purchasing Entity's Enterprise; or
4. Infringement by a non-IBM Product or an Other IBM Program alone.

**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:
- Band 1: File/Print Servers, Mid-Range Servers

Band 2: Desktops, Laptops  
Band 3: Printers, High speed; Medium speed; Desktop; Laptop  
Band 4: Storage Solutions  
LAN equipment and related software.  
General Purpose Software

- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to use commercially reasonable efforts to delivery Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

For Minnesota transactions, in the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any

such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product

specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.

- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder, loss of, or damage to data, lost profits, business, revenue, goodwill, or anticipated savings even if the Contractor has been advised of the possibility of such damages. Both parties agree that this Contract does not create any right or cause of action for any third party against the other except for third party claims that fit within the indemnification provision of this Contract.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

Each party, upon final payment of the amount due under this Agreement, releases the other, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by any statutorily required data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.
- E. Notwithstanding the above, the parties agree that any confidential information required to be exchanged will be done so under the terms of a signed confidentiality agreement. See attached Exhibit D.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
  - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996

Email: bernie.kopischke@state.mn.us

**To Contractor:**

IBM Corporation  
James Schroeder  
WSCA National Program Manager  
IBM Global Government Systems  
4263 Commercial St. SE, Suite 100  
Salem OR 97302  
Fax: 503.399.3793 (TL 284)  
Email: jschroed@us.ibm.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 43. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.



8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
  1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

Prior to the issuance of a purchase order, the Contractor will specify Materials to be delivered to the Purchasing Entity and will identify them as being "Type I Materials," "Type II Materials," "Type III", or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

**A. Ownership of Documents/Copyright for Type III Materials.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State, and described in the Contract as a Type III Material, shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.

**B. Rights, Title and Interest.** Along with ownership of the materials, any and all copyrights in the copyrightable material will be assigned to the State. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where so agreed, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, or patents.

**C. Definition of Material Types**

Type I Materials are those, created during the Service performance period, in which the Purchasing Entity will have all right, title, and interest (including ownership of copyright). Contractor will retain one copy of the Materials. The Purchasing Entity grants Contractor 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will deliver one copy of the specified Materials to the Purchasing Entity. Contractor grants the Purchasing Entity an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Purchasing Entity's Enterprise only, copies of Type II Materials.

Type III Materials are those, created during the project, which you will own (including ownership of copyright). No license is granted to IBM with respect to Type III Materials. However, both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provided under this Agreement.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging for ordering by the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is SPIN #143005607

The Universal Service Administrative Company (USAC) maintains an Eligible Services List on its web site that categorizes services as (a) eligible for discounts, (b) not eligible for discounts, or (c) conditionally eligible for discounts (i.e., depending on details of how a service or component is utilized). The current listing of eligible services and products can be found at <http://www.sl.universalservice.org/reference/eligible.asp> and is current as of 10/13/2003. The SLD has indicated that there will be another update before the end of 2003.

To the extent IBM's participation in the E-rate program is consistent with its corporate strategy and direction, the Contractor shall continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. IBM CORPORATION**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: James C. Schroeder

Title: IBM WSCA/NASPO NATIONAL Pgm. Mgr.

Date: AUGUST 23, 2004

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke

Title: Acquisition Management Specialist

Date: 8/24/04

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: Brenda Willard

Date: 8/24/04

## **EXHIBIT A - ADDITIONAL WARRANTIES**

### **A. Warranty for IBM Machines**

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, you may return it to IBM and your money will be refunded.

### **B. Warranty for IBM Programs**

IBM warrants that each warranted IBM Program, when used in the Specified Operating Environment, will conform to its Specifications. The warranty period for a Program expires when its Program Service are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability. If a Program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it.

### **C. Warranty for IBM Services**

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document.

### **D. Warranty for Systems**

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

### **E. Extent of Warranty**

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

### **F. Items Not Covered by Warranty**

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects. IBM will identify IBM Machines and Programs that it does not warrant.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

## EXHIBIT B - COMPLAINT RESOLUTION

### A. Hardware and Software Support 1-800-IBM-SERV

1. The IBM support organization's goal is to ensure customer satisfaction by:
  - a. Responding to your calls within targeted guidelines.
  - b. Providing ongoing communication regarding your problem status through problem resolution.
  - c. Taking ownership of your call for support.
  - d. Providing a defined escalation process when management assistance is needed.
  - e. Maintaining our commitment to continuous improvement of our service processes.
2. IBM support gives you the ability to contact IBM and ask installation and usage related questions as well as make defect inquiries about eligible products. You have the option of voice (1-800-IBM-SERV) or electronic access (<http://www.ibm.com/support>) to a team of technical specialists. Support is available 24 hours per day, 7 days per week, 365 days per year.
3. For all eligible products, IBM can help you with:
  - a. General Support:
    - Usage and installation questions
    - Product compatibility and interoperability questions
    - Interpretation of product documentation
    - Diagnostic information reviews to help isolate the cause of a problem
    - Configuration samples
    - IBM and multivendor database searches
    - Planning information for software fixes
    - Defect Support
  - b. Electronic Support:
    - Submit problems and get answers electronically
    - View screens remotely
    - Submit documents electronically
    - View open problems that have been submitted
    - Search IBM's question and answer database
4. Before contacting support, you will need to gather information about the problem and have it on hand when discussing the situation with a specialist.
  - a. define the problem
  - b. gather background information
  - c. gather relevant diagnostic information
  - d. determine the business impact – assign a severity level
    - Severity 1 - Critical business impact, this indicates you are unable to use the program resulting in a critical impact on operations. This condition requires an immediate solution.
    - Severity 2 - Significant business impact, this indicates the problem is usable but is severely limited.
    - Severity 3 - Some business impact, this indicates the program is usable with less significant features (not critical to operations) unavailable.
    - Severity 4 - Minimal business impact, this indicates the problem causes little impact on operations or that a reasonable circumvention to the problem has been implemented.
5. When you call support to report an IBM software problem or update/gain status on a problem, your request will be routed to a technical specialist. For onsite support, IBM will attempt to diagnose and resolve the problem remotely before sending a technician onsite. Onsite response times vary dependent on purchased warranty and maintenance coverage options. IBM will use commercially reasonable efforts to respond by telephone to hardware and software service calls within two business hours during normal country business hours, and within two hours during off-shift hours for critical problems. Our initial response may result in resolution of your request, or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request.

6. Whether you contact IBM by telephone or electronically, once logged, a unique problem management record (PMR) or Incident/Support case is created. Your PMR, Incident or Support Case is routed to a resolution team for handling. You may be transferred directly to the resolution team or your issue will be placed in a queue for call back. In either case, the next person you speak with will be a specialist in the appropriate resolution team.
7. At the resolution team level your call is researched, resolved, or escalated as appropriate. Due to the level of specialization required to maintain superior technical expertise at the team level, it is sometimes necessary to involve more than one support team in resolving a particular software problem. This is easily handled, as our support teams are all networked together and work as one to resolve whatever problems or issues arise.
8. If at any point in our service process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a Duty Manager or by calling your local customer service executive. Escalations to an IBM manager will receive prompt attention and management focus. The Duty Manager or customer service executive will work with our technical staff to ensure your expectations are met and that your request is being handled appropriately. Further escalation procedures for complaint resolution are described in the following "IBM Complaint Management Process for Customer Complaints and Escalation Management" section of this RFP response.

## **B. IBM Billing and Ordering Support**

1. Electronic Billing:
  - a. IBM Invoices OnLine allows you to view your invoices using an Internet browser. Once you register with us providing an e-mail address and your IBM customer numbers, you'll receive a login ID and password. Whenever new invoices are issued, you will receive an e-mail notification alerting you to this fact. You can then login to Invoices OnLine and view them. You can also search the invoice database by customer number, date range, invoice type or payment status to view previously delivered invoices.
  - b. Electronic Data Interchange (EDI) will transmit invoices electronically to you and can feed right into your inventory management and / or accounts payable systems. IBM charges no fee for electronic invoicing. If you are interested in this method contact us by calling the toll free number on the top of your invoice or by sending a note to address in the upper left corner of your invoice and we will have someone contact you regarding this option.
  - c. Eprocurement - IBM can help leverage your investment by integrating your eProcurement system with an IBM electronic catalog. We provide the catalog with the products and prices you are entitled to through your current agreement/contract with IBM. Your end users can shop for the IBM products they need and place their order electronically.
2. In the event there is a problem with your order or invoice, IBM telephone support for ordering or billing inquiries is available from 8:00 am to 8:00 pm EST, Monday through Friday, by calling 1-877-426-6006, option 2. IBM Customers with ordering inquiries also have the ability to submit an online request for order related inquiry.
3. there are two different methods available within Invoices On-Line to electronically communicate with us if you have a question, comment, or problem with an invoice. The invoice inquiry function available from Invoices On-Line automatically creates a prepopulated inquiry form that includes the customer number, invoice number, your name, account name, e-mail address and telephone number is prepopulated on the form, all you need to do is select from a list the reason for your inquiry or invoice dispute and submit the form to us. We will review your request and respond to you as quickly as possible. You can also send an e-mail to us by clicking on the "Contact Us" button.
4. Once received by the IBM customer service team (telephone or electronic), our goal is to respond to your inquiry within one business day. Most inquiries are quickly resolved. If at any point in the inquiry process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a CSO (customer service operations) Manager. CSO Managers are assigned



geographically throughout the United States. Escalations to a CSO manager will receive prompt attention and management focus. They will work with our order and billing staff to ensure your expectations are met and that your request is being handled appropriately.

5. Further escalation procedures for complaint resolution are described in the following section.

#### **C. IBM Complaint Management Process for Customer Complaints and Escalation Management**

1. The Complaint Management Process is the business process IBM uses to manage customer complaints and escalations when "business as usual" or advertised or entitled support processes have been exercised but have failed to resolve the customer's problem in a timely manner. A customer complaint is defined as:
  - a. A request from a customer or IBMer to correct an unfulfilled customer expectation or commitment/promise.
  - b. A failure from a previous customer-IBM interaction to deliver on a commitment/expectation.
  - c. When the customer has attempted to exercise all or part of the advertised or entitled support structures to resolve a problem and is dissatisfied with its progress.
  - d. Customers may complain to an IBM executive. In these cases, these are referred to as executive complaints.
2. A critical situation is defined as:
  - a. A customer complaint that is escalated within IBM to a status of Critical. Escalation to a Critical Situation is considered when:
    - The problem is causing or is about to cause severe impact to the customer's business, or
    - Customer satisfaction has or is about to erode to the point that customer loyalty is in jeopardy, or
    - IBM determines that this problem is jeopardizing IBM's relationship with this customer and additional actions must be taken to save that relationship.
3. An alert is defined as:
  - a. A situation used primarily by the service/marketing offices to notify a pre-established list of people when a customer in that office/area has a critical product failure. This is often used for system down situations so that appropriate people are made aware of this situation and may act to resolve it.
4. A proactive situation is defined as:
  - a. A situation created internally by IBM for the purpose of complaint avoidance. When an IBM employee becomes aware of a situation which may lead to customer dissatisfaction if not addressed, they may proactively engage additional resources to resolve the problem. The customer may or may not be aware that the situation has been opened.
5. The Complaint Management Tool is a consolidated, worldwide information system that supports management of customer and executive complaints, critical situations, proactive and alert situations. It links complaint management personnel in all geographies within IBM business units, product divisions, headquarters, etc. for streamlined escalation management. The key Roles and Responsibilities of the Complaint Management Tool are:
  - a. Feedback Collector (FC), the person with initial contact with the customer.
    - Captures key customer information, such as contact information and problem description.
    - Categorizes the primary problem/issue so that the complaint can be routed to the most appropriate Resolution Owner.
  - b. Response Coordinator (RC), identifies the most appropriate RO or RTL or RA to engage in a situation when a request for assistance is made:
    - Ensures right RO/RTL from their organization is assigned.
    - Monitors progress against responsiveness indicators such as 7-day Close or Action plan, 48 hour RO acknowledgement, 48 hour RTL assignment, etc.
    - Keeps functional management informed.

- c. Resolution Owner (RO), acts as the customer advocate by serving as the primary IBM interface with the customer.
    - Contacts the customer within 48 hours to acknowledge ownership of the situation and determine the customer's conditions of satisfaction.
    - Develops and documents a customer-agreed to action plan within 7 working days of open.
    - Qualifies situations for the escalation process.
    - Engages a Resolution Team Leader and Resolution Assistants if assistance is needed to resolve the customer concerns.
    - Confirms with customer that the issue is resolved to their satisfaction and that the customer agrees to closure.
  - d. Resolution Team Leader (RTL), teams with the Resolution Owner to resolve the customer's issue:
    - Develops and manages the IBM internal resolution action plan.
    - Provides technical/organizational knowledge to help engage the right resources, including RAs.
    - Works in partnership with the Resolution Owner.
  - e. Resolution Assistant (RA), assists the RO or the RTL:
    - Performs action plan tasks.
    - Provides assistance in resolving the customer request or preventing recurrence.
  - f. Senior Executive Reviewer (SER) is the senior executive escalation process which provides:
    - Issues already escalated through worldwide customer satisfaction project offices whose resolution was not acceptable to the General Manager of the Resolution Owner's (RO) organization.
    - Situations affecting multiple customers which identify pervasive and complex issues involving multiple Divisions where the problems have not been resolved.
6. How the CM tool works to resolve customer complaints:
- a. A customer complaint is received by any customer contact person (the Feedback Collector).
  - b. The Feedback Collector records the customer's issue and contact information and categorizes the customer's primary problem. The FC requests assistance in assigning the appropriate Resolution Owner based upon the customer's issue.
  - c. The RO contacts the customer within 48 hours to acknowledge ownership, explore the customer's conditions of satisfaction, develops an action plan which may involve escalation to various levels of management across divisions, and resolves the customer complaint. If resolution assistance is needed, the Resolution Owner requests assistance for a Resolution Team Leader to be assigned within 48 hours.
  - d. The RO and the RTL document and execute the agreed-to action plan to resolve the situation.
  - e. When the customer agrees the situation is resolved, the RO closes the situation.

## **EXHIBIT C - VALUE ADDED SERVICES**

Contact the Contractor for more details on these services and their related costs. All professional services **MUST** be related to the purchase of equipment from the Contract.

- A. **Cabling Infrastructure**  
Cabling Infrastructure includes but is not limited to:
  - 1. Cat5 or greater cable
  - 2. Coax
  - 3. Fiber (SM and MM)
  - 4. All Cable trays and support materials
  - 5. Termination equipment
  - 6. IDF/MDF support (racks, termination equipment, tags, patch panels, etc.)
- B. **Network Electronics** - IBM supports all major Network Electronics vendors, but specializes in Cisco technologies.
- C. **Wireless Infrastructure**  
During a typical IBM Wireless LAN engagement, IBM will conduct Site Surveys to determine installation requirements. IBM will procure, configure and perform a system test of the wireless equipment. IBM will then perform the physical installation of the wireless LAN bridge equipment at the designated site, as well as configure and test the Wireless LAN bridge equipment. Wireless LAN is defined as technology conforming to 802.11X standards.
- D. **High Bandwidth Infrastructure**  
IBM provides High Bandwidth Infrastructure through a number of methods. IBM is defining this category to be "connectivity between distinct physical locations with speeds at OC3 or greater." This type of bandwidth capability is important to clients seeking an infrastructure to unify voice, video, and data over a single transport mechanism.
- E. **Data Center Services**  
IBM provides a range of services for the build, move, upgrade, and/or security of a client data center. These services combine IBM labor (see rate table) with various specific service offerings or OEM technology to deliver the most comprehensive Data Center Services in the Industry.
- F. **Servers & Storage**  
Servers and storage are key infrastructure components for an enterprise. Depending on the size and the client's legacy systems integration requirements, IBM offers server and storage solutions with the largest scalability in the industry. Whether in a school site or part of a data center server consolidation program, IBM can design a server/storage system, install, configure, train staff, and support that system for WSCA clients.
- G. **Operating Systems Engineering, Design, Deployment**  
IBM provides a range of services for Operating Systems. From the Engineering of the build process, golden images for deployment, application testing, hardware / configuration testing to the configuration of the various services that are required to provide enterprise services from the platform.
- H. **Infrastructure Software**  
IBM provides a complete suite of infrastructure software for our client's needs. IBM defines the following categories of software as Infrastructure Software and can provide IBM or third party products for each category
- I. **Web Portal**  
As one of three types of information (data) that requires information transport, IBM offers a Web Portal solution through IBM's Web Connection Framework (WCF). Web Portal is the entry point for a client's information that is provided in a Browser based format to all constituencies in the enterprise. IBM takes Web capabilities to their logical application as a solution for client needs by connecting various parties to

conduct the "business" of the enterprise. IBM calls this type of activity 'e-business' and is widely credited with authoring that phrase.

**J. Technical Services**

Technical Services typically include the following:

1. Design/Engineering
  - a. Solution Design
  - b. Technical Engineering
  - c. Product Certified Specialists
  - d. Business and Technical services
  - e. Solution Installation
  - f. Hardware
  - g. Software
2. System Configuration
  - a. Configuration
  - b. Testing
3. Maintenance
  - a. Break/Fix Support
  - b. Software Maintenance
  - c. Network Maintenance
4. Training - Staff Training in Support of Infrastructure Solution
5. Support
  - a. Help Desk / Support Center – implement and operate support for end users.
  - b. Problem Management – reduce the number and impact of problems.
  - c. Change Management – provide smooth changes into system operations.
  - d. Knowledge Management – capture problem resolution and 'how to' procedures for reuse.
  - e. Event and Availability Management – monitoring and proactive network management, including components such as access management, configuration management, software distribution, etc.

**K. Network Management Services such as Help Desk**

Network Management can be handled either by installing tools on-site and run by the client technology staff (after appropriate training) or can be delivered as a remote service. Operation by client staff is covered in the procurement of Hardware, Software, and Training, therefore this section addresses remote network management specifically where the client procures a service and not the tools themselves.

IBM Remote Network Management Services is an out-tasking service for monitoring, managing and maintaining your I/T infrastructure seven days a week, twenty-four hours a day (7x24). This service is enabled by connecting the WSCA participant's network to the IBM Network Operations Center.

IBM provides network management services for active assets that reside on the network and support Simple Network Management Protocol (SNMP). These assets may be routers, switches, intelligent hubs, servers, etc.

IBM provides monthly and real-time on-line reports, as well as a secure Internet portal to view your network status in "real-time". This includes topology maps that graphically depict the managed assets within the network, thereby enabling efficient response to problems. Each month IBM reviews your reports, interprets your data and recommends improvements as required as part of the Engineering Analysis service.

Services include: Problem Management, Performance Management, Configuration Management for routers and switches, Change Management for routers and switches, and Internet Security Service.

**L. Asset Management**

IBM's Asset Management solutions can be provided on-site at the client location or as remotely delivered services. Our solution encompasses a closed loop set of processes to ensure that IT assets are managed from 'cradle to grave,' including procurement, tracking/operations, disposal, and associate financials. A central repository of assets is at the hub of the closed loop processes, with updates being provided by the processes that perform activity on or change the location of the asset.

**M. Security**

IBM delivers security solutions that help customers to assess their needs, protect data and assets, detect threats and intrusions, and recover from incidents. We even offer services to manage your security needs end-to-end. Together with our Alliance partners, IBM delivers best-of-breed IT solutions according to the industry-specific needs of any organization.

**N. Training**

IBM IT(Information Technology) Education Services is the largest IT training organization in the world. We deliver approximately 5,000 classes per month. IT instructional services include:

1. Solutions for innovative on-line learning technologies.
2. Resources for on-line instructional development and packaging.
3. Synchronous Tools/Techniques for On-Line Learning.
4. Classroom technologies and infrastructures.
5. Digital classroom of the future
6. Lab technologies and infrastructures.
7. Application technologies.

## **EXHIBIT D - CONFIDENTIALITY AGREEMENT**

### **IBM Agreement for Exchange of Confidential Information**

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

#### **1. Disclosure**

Information will be disclosed either:

- 1) in writing;
- 2) by delivery of items;
- 3) by initiation of access to Information, such as may be in a data base; or
- 4) by oral or visual presentation.

#### **2. Obligations**

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

The Recipient agrees to:

- 1) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
- 2) use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

- 3) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
- 4) any other party with the Discloser's prior written consent.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order. [We cannot promise to enter into written agreements with State employees, who are subject to collective bargaining agreements that restrict terms and conditions of employment.]

#### **3. Confidentiality Period**

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

#### **4. Exceptions to Obligations**

The Recipient may disclose, publish, disseminate, and use Information that is:

- 1) already in its possession without obligation of confidentiality;
- 2) developed independently;
- 3) obtained from a source other than the Discloser without obligation of confidentiality;
- 4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
- 5) disclosed by the Discloser to another without obligation of confidentiality.
- 6) required to be disclosed by applicable law, or judicial or administrative order issued by a court or administrative agency of competent jurisdiction.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser's Information which are retained in the memories of Recipient's employees who have had access to the Information under this Agreement.

**5. Disclaimers**

**THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.**

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

**6. General**

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

- 1) providing to others products or services which may be competitive with products or services of the Discloser;
- 2) providing products or services to others who compete with the Discloser; or
- 3) assigning its employees in any way it may choose.

The Recipient will comply with all applicable export and import laws and regulations.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Both of us consent to the application of the laws of the State of New York to govern, interpret, and enforce all of our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:

By \_\_\_\_\_  
(Authorized Signature)

Name (type of print): \_\_\_\_\_

Date: \_\_\_\_\_

Identification number: \_\_\_\_\_

Address: \_\_\_\_\_

Agreed to:

IBM/Rational Software

By \_\_\_\_\_  
(Authorized Signature)

Name (type or print): \_\_\_\_\_

Date: \_\_\_\_\_

Agreement number: \_\_\_\_\_

Address: \_\_\_\_\_

**After signing, please return a copy of this Agreement to the "IBM address" shown above.**